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(P-959)

NATIONAL JUDICIAL ACADEMY

REFRESHER COURSE TO EVALUATE AND REVIEW PERFORMANCE OF JJBs (P-959) DECEMBER 3-6, 2015

REFERENCE MATERIAL

COMPILED AND EDITED
BY
SHRUTI JANE EUSEBIUS, LAW ASSOCIATE,
NATIONAL JUDICIAL ACADEMY

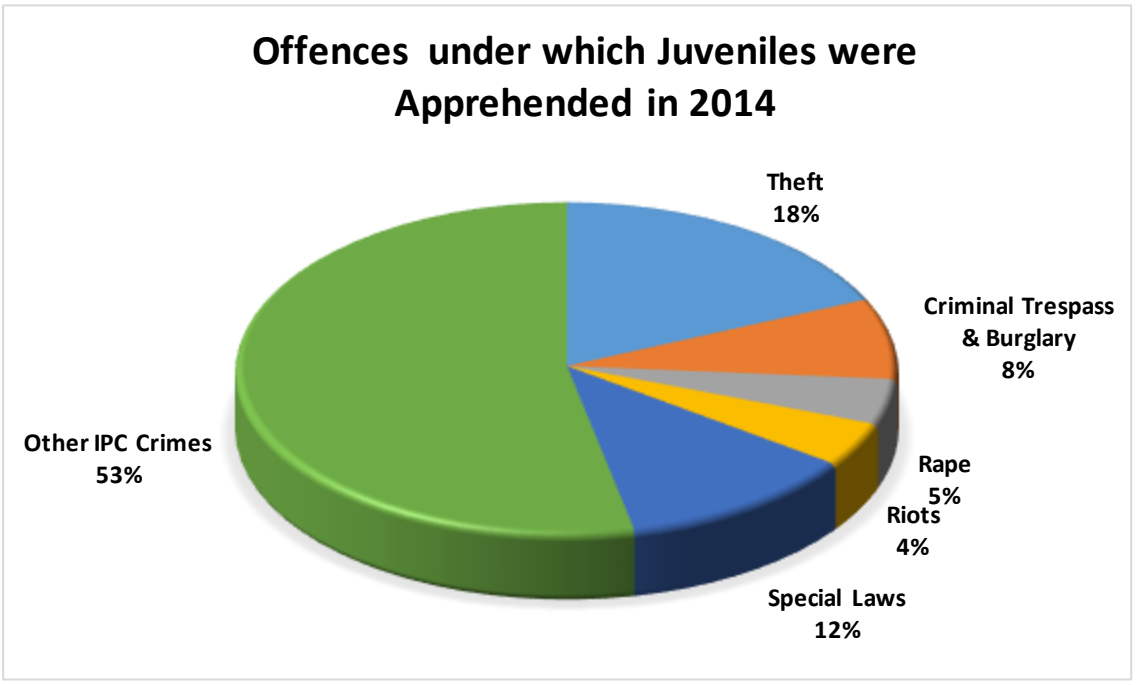
21.	*Jarnail Singh Vs. State of Haryana*, (2013)7SCC263
22.	*Babla @ Dinesh Vs. State of Uttarakhand*, (2012)8SCC800
23.	*Jodhbir Singh Vs. State of Punjab*, 2012(11)SCALE595
24.	*Ishtikhar Vs. State of U.P.*, (2012)12SCC307
25.	*Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, (2012)10SCC489
26.	*Shah Nawaz Vs. State of U.P*, (2011)13SCC751
27.	*Daya Nand Vs. State of Haryana*, (2011)2SCC224
28.	*Amit Singh Vs. State of Maharashtra*, (2011)13SCC744
29.	*Vikas Chaudhary Vs. State of NCT of Delhi*, (2010)8SCC508
30.	*Mohan Mali and Anr. Vs. State of M.P.*, (2010)6SCC669
31.	*Jabar Singh Vs. Dinesh*, (2010)3SCC757
32.	*Bhim @ Uttam Ghosh Vs. State of West Bengal*, (2010)14SCC571
33.	*Dharambir Vs. State*, (2010)5SCC344
34.	*Hari Ram Vs. State of Rajasthan*, (2009)13SCC211
IV	**Enquiry Procedure under JJ Act**
35.	*Ashwani Kumar Saxena Vs. State of M.P.*, AIR2013SC553
36.	*Om Prakash Vs. State of Rajasthan*, (2012)5SCC201
37.	*Shimil Kumar Vs. State of Haryana*, MANU/PH/2808/2013
V	**Appropriate Orders under the JJ Act**
38.	*Chander Mohan @ Bunti Vs State of Haryana*, MANU/PH/3532/2010
39.	*Gurdarshan Singh Vs. State of Punjab*, MANU/PH/2570/2012
40.	*In Reference Vs. Golu*, MANU/MP/0431/2015
41.	*Jitendra Singh @ Babboo Singh Vs. State of U.P*, 2013(9)SCALE18
42.	*Kalu @ Amit Vs. State of Haryana*, (2012)8SCC34
43.	*Lakhan Lal Vs. State of Bihar*, 2011(1)SCALE504
44.	*Subhash Vs. State*, MANU/DE/1877/2011
45.	*Sunil Ojha Vs. The State of NCT of Delhi*, MANU/DE/1335/2007
46.	Final Orders of Juveniles Apprehended in 2014, "Crime in India-2014", National Crime Records Bureau, Ministry of Home Affairs, http://ncrb.nic.in

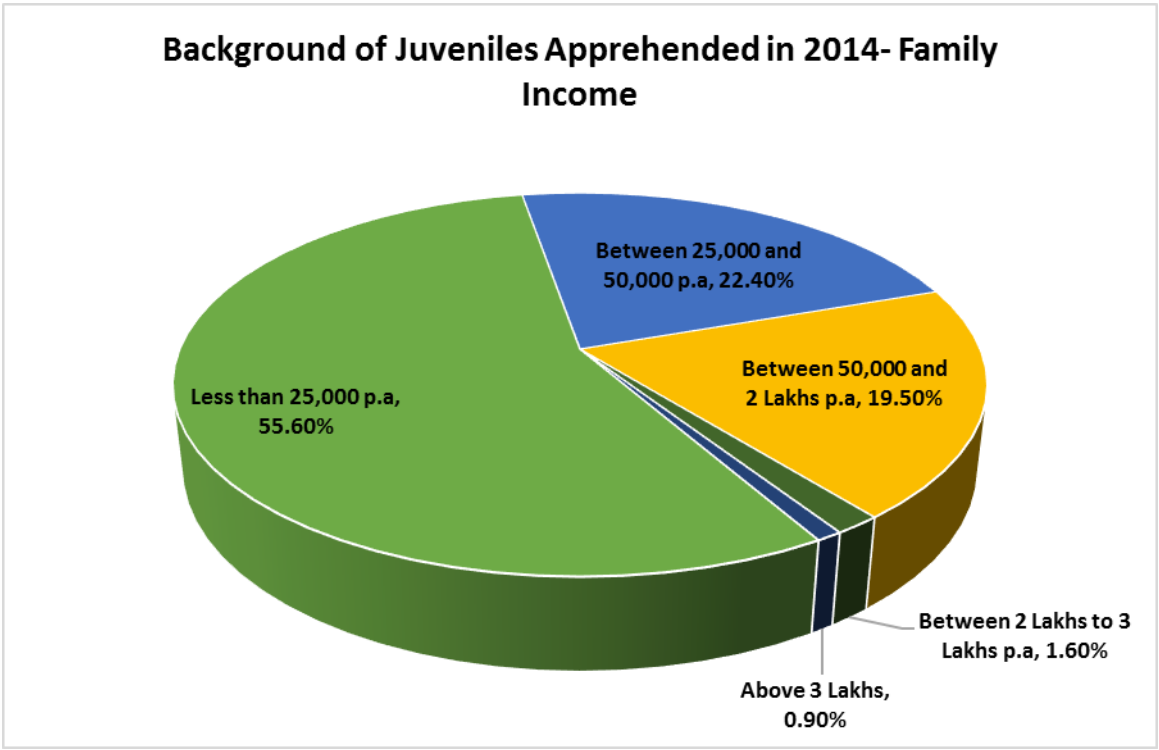
VI	**Effectiveness of Institutions under JJ Act**
47.	*Sampurna Behura Vs. Union of India*, 2011(11)SCALE512
48.	*Court On Its Own Motion Vs. Dept. of Women and Child Development*, MANU/DE/2139/2012

NOTE: The Cases in the Reference Material have been edited in order to highlight some issues for discussion in the programme. Please read the full judgment for conclusive opinion.

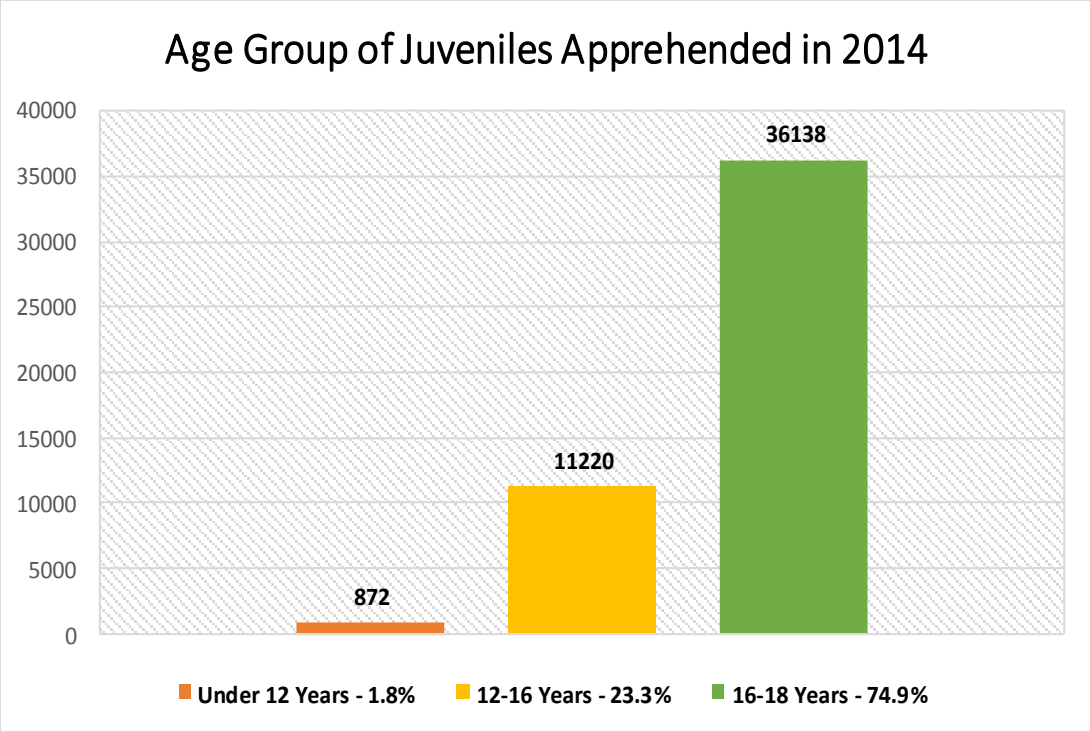
I
DELINQUENCY AND RECIDIVISM

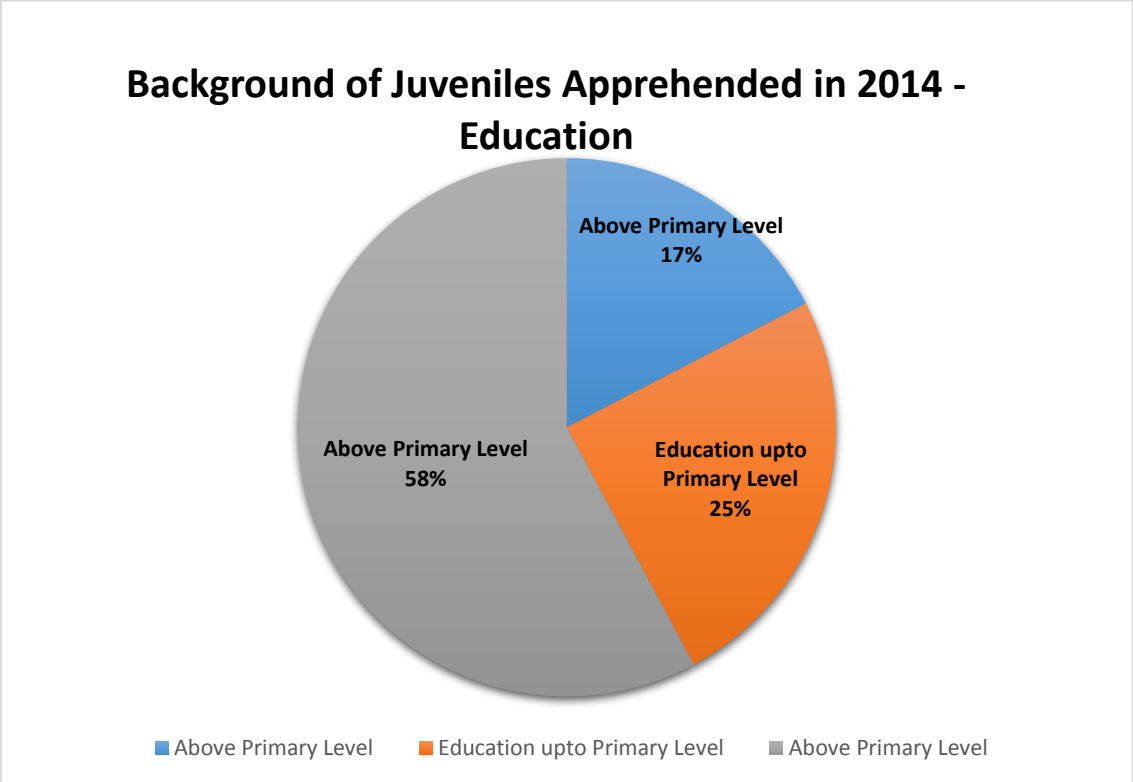
JUVENILES IN CONFLICT WITH LAW IN 2014[1]





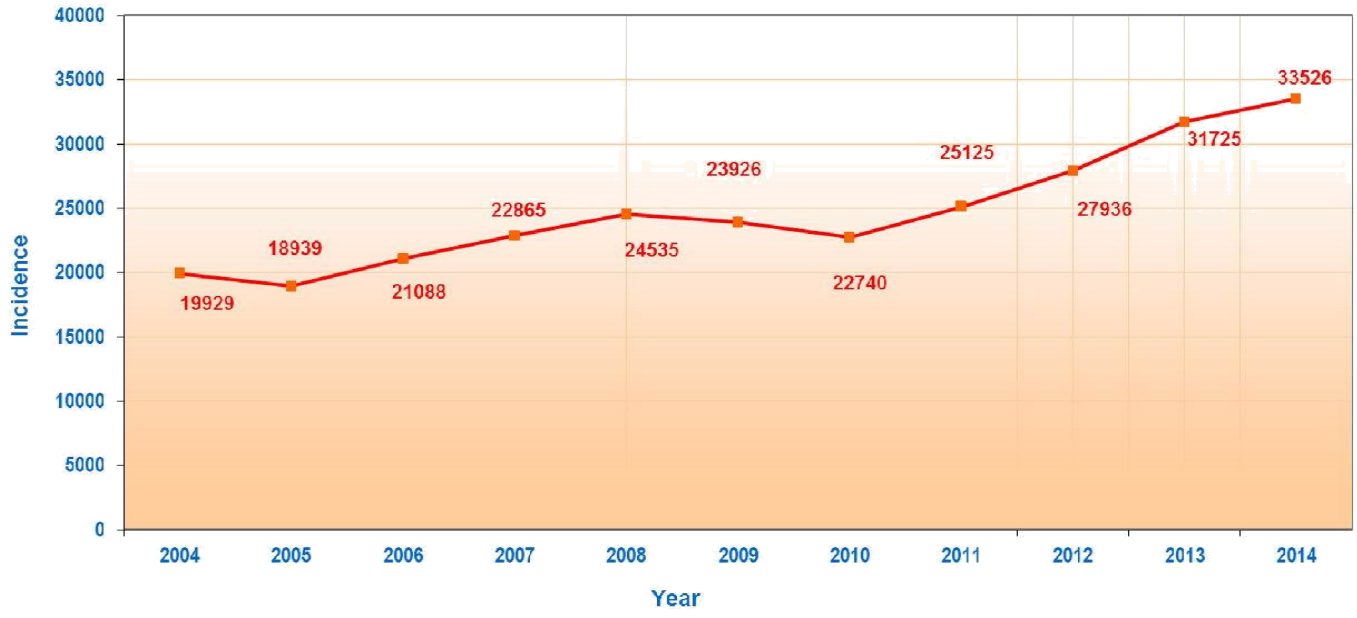
[1] *Source:* Crime in India-2014, National Crime Records Bureau, Ministry of Home Affairs


Age Group of Juveniles Apprehended in 2014
40000
35000
30000
25000
20000
15000
10000
5000
0
872
11220
36138
Under 12 Years - 1.8%
12-16 Years - 23.3%
16-18 Years - 74.9%


Background of Juveniles Apprehended in 2014 - Education
Above Primary Level 17%
Education upto Primary Level 25%
Above Primary Level 58%
Above Primary Level
Education upto Primary Level
Above Primary Level

Cases Registered Against Juveniles under IPC Crimes during 2004 - 2014

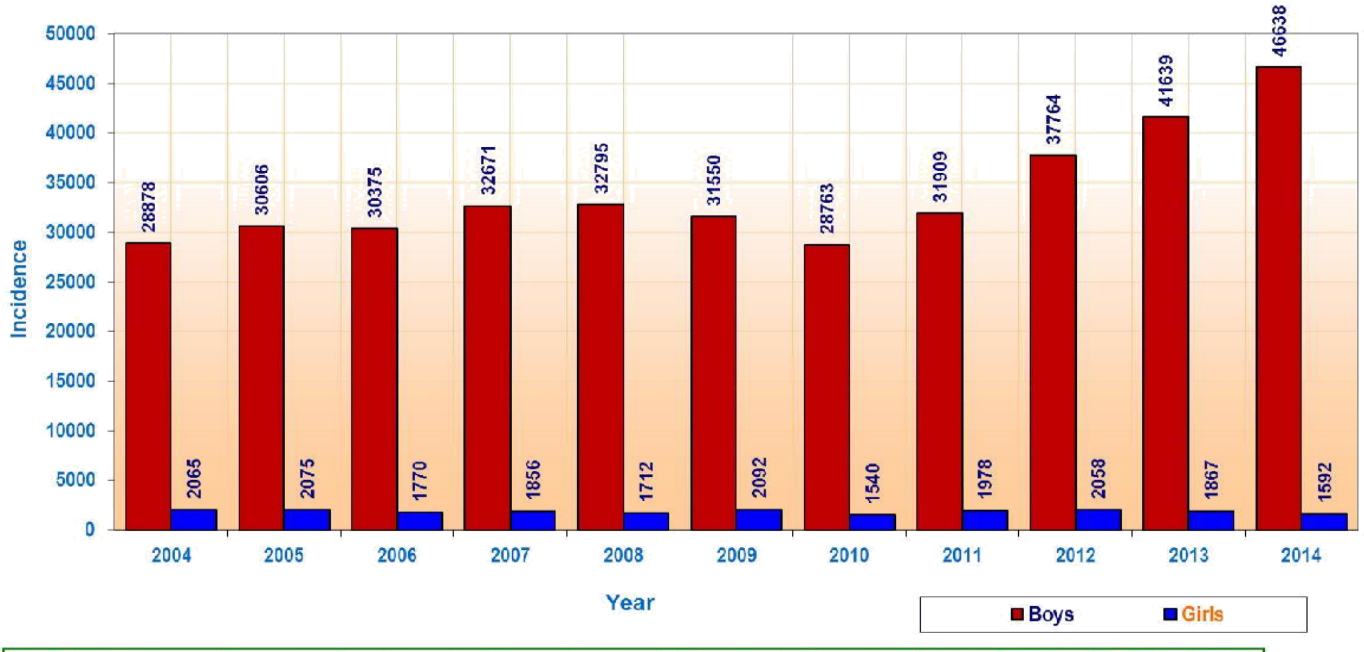
Figure 10.1



Boys & girls below 18 years of age group have been taken as juveniles according to new definition of Juvenile Justice (Care & Protection of Children) Act, 2000 w.e.f. 2001

Juveniles Apprehended under IPC & SLL Crimes (2004-2014)

Figure 10.2



Boys & girls below 18 years of age group have been taken as juveniles according to new definition of Juvenile Justice (Care & Protection of Children) Act, 2000 w.e.f. 2001

Source: Crime in India-2014, National Crime Records Bureau, Ministry of Home Affairs

Incidence and Rate of Juvenile Delinquency under IPC Crimes in India[2] (1998 to 2014)					
Year	Incidence of		% age of Juvenile Crimes to Total Crimes	Estimated Mid Year Population* (In Lakh)	Rate of Crime by Juveniles
	Juvenile Crimes	Total Cognizable Crimes			
1998	9352	1778815	0.5	9709	1.0
1999	8888	1764629	0.5	9866	0.9
2000	9267	1771084	0.5	10021	0.9
2001 **	16509	1769308	0.9	10270	1.6
2002	18560	1780330	1.0	10506	1.8
2003	17819	1716120	1.0	10682	1.7
2004	19229	1832015	1.0	10856	1.8
2005	18939	1822602	1.0	11028	1.7
2006	21088	1878293	1.1	11198	1.9
2007	22865	1989673	1.1	11366	2.0
2008	24535	2093379	1.2	11531	2.1
2009	23926	2121345	1.1	11694	2.0
2010	22740	2224831	1.0	11858	1.9
2011 ##	25125	2325575	1.1	12102	2.1
2012	27936	2387188	1.2	12134	2.3
2013	31725	2647722	1.2	12288^	2.6
2014	33526	2851563	1.2	12440^	2.7

NOTE : * : THE REGISTRAR GENERAL OF INDIA.

** : ACTUAL POPULATION AS PER 2001 CENSUS.

: THE BOYS AGE GROUP OF 16-18 YEARS HAS ALSO BEEN CONSIDERED AS JUVENILES SINCE 2001 ONWARDS AS PER REVISED DEFINITION OF JUVENILE JUSTICE ACT.

: ACTUAL CENSUS-2011 POPULATION (PROVISIONAL).

^ : ACTUAL POPULATION AS PER THE POPULATION CENSUS.

SOURCE : MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA. (ON346) & (ON861)

[2] Source – www.indiastat.com

CRIME HEAD-WISE NUMBER OF JUVENILE DELINQUENCY IPC CASES IN INDIA (1995, 1998 TO 2013)[3]																	
Crime Head	1995	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Murder (Sec.302 IPC)	253	253	250	465	531	531	465	472	522	605	672	743	844	679	888	990	1007
Attempt to Commit Murder (Sec. 307 IPC)	208	163	179	475	449	469	475	443	374	489	547	563	603	543	-	-	825
C.H. not Amounting Murder (Sec. 304, 308 IPC)	23	22	21	25	34	22	25	19	58	36	41	23	25	35	51	48	71
Rape (Sec. 376 IPC)	174	199	159	466	399	485	466	568	586	656	746	776	798	858	1149	1175	1884
Custodial Rape	*	*	*	0	0	0	0	0	0	0	0	0	0	@	-	-	0
Other Rape	*	*	*	466	399	485	466	568	586	656	746	776	798	858	-	-	1884
Kidnapping and Abduction (Sec. 363-369,371-373 IPC)	152	153	83	202	122	164	202	232	246	271	301	354	396	524	760	789	1121
(i) Of Women and Girls	66	134	66	158	79	109	158	167	191	208	205	242	275	391	-	-	969
(ii) Of others	86	19	17	44	43	55	44	65	55	63	96	112	121	133	-	-	152
Dacoity (Sec. 395-398 IPC)	56	35	25	122	59	63	122	121	120	99	144	161	150	97	134	174	160
Preparation and Assembly for Dacoity (Sec. 399-402 IPC)	3	2	2	38	51	46	38	46	58	74	87	68	72	51	-	-	87

[3] Source – www.indiastat.com

Robbery (Sec. 392-394,397,398 IPC)	76	52	68	208	164	207	208	224	230	321	409	500	481	551	639	767	904
Burglary (Sec. 449-452,454,455,457-460 IPC)	1285	1294	1344	2134	1687	1723	2134	2138	2270	2675	2603	2702	2431	2271	2609	2625	2860
Theft (Sec. 379-382 IPC)	2835	2143	2172	3680	3196	3361	3680	4554	4846	5316	5606	5615	5253	4930	5320	5528	6386
(i) Auto Theft	*	*	158	604	437	563	604	748	904	1072	1068	1319	1512	1457	-	-	1850
(ii) Other Theft	*	*	2010	3076	2759	2798	3076	3806	3942	4244	4538	4296	3741	3473	-	-	4536
Riots (Sec. 143-145,147-151,153,153A,153B,157,158,160 IPC)	955	574	509	1030	1228	1066	1030	982	934	988	1440	1574	1422	1081	1347	1690	1486
Criminal Breach of Trust (Sec. 406-409 IPC)	33	19	13	56	59	39	56	43	30	15	40	53	17	28	24	22	23
Cheating (Sec. 419,420 IPC)	1	32	31	104	83	88	104	149	106	94	111	135	108	134	161	148	136
Counterfeiting (Sec. 231-254,489A-489D IPC)	1	0	7	8	4	3	8	9	7	8	12	17	11	11	20	33	13
Arson (Sec. 435,436,438 IPC)	8	24	40	34	48	107	34	44	60	36	63	75	79	59	-	-	69
Hurt (Sec. 323-333,335-338 IPC)	791	1645	1472	3074	3234	4137	3074	3226	2979	3585	3810	4257	3646	3800	-	-	4902
Dowry Deaths (Sec.	27	77	52	52	50	65	52	51	102	60	70	68	87	57	-	-	60

304B IPC)																	
Molestation (Sec. 354 IPC)	86	136	116	522	380	522	522	460	478	488	476	560	474	546	-	-	1424
Sexual Harassment (Sec. 509 IPC)	22	37	27	286	105	265	286	186	137	148	129	132	153	174	-	-	312
Cruelty by Husband and Relatives (Sec. 498A IPC)	192	249	273	202	349	262	202	206	275	219	302	239	284	238	-	-	281
Importation of Girls (Sec. 366B IPC)	*	*	0	0	0	0	0	0	0	0	0	0	0	1	-	-	0
Death due to Negligence (304A IPC)	*	*	*	78	49	60	78	60	65	163	108	165	165	211	-	-	259
Other IPC Crimes	2527	2243	2045	4558	4228	4875	4558	4996	4456	4742	5148	5755	6427	5861	12023	13947	7455
Total Cognizable Crimes under IPC	9766	9352	8888	17819	16509	18560	17819	19229	18939	21088	22865	24535	23926	22740	25125	27936	31725

Abbr. : IPC : Indian Penal Code.

Note : * : Indicates that the Crime Head was not introduced till that year.

@ : Indicates infinite variation because of division by zero

: As per revised definition of Juvenile Justice Act the boys age group of 16-18 years has also been considered as Juveniles since 2001.

Source : Ministry of Home Affairs, Govt. of India. (ON209), (ON435) & Ministry of Statistics and Programme Implementation, Govt. of India. (ON402)

2015(4)SCALE531

IN THE SUPREME COURT OF INDIA

S.L.P. (Crl.) Nos. 2366-2368/2015

Decided On: 06.04.2015

Gaurav Kumar Vs. State of Haryana

Hon'ble Judges/Coram: Dipak Misra and Prafulla C. Pant, JJ.

When we said that we thought that there should be a rethinking by the Legislature, it is apt to note here that there can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences but in cases of rape, dacoity, murder which are heinous crimes, it is extremely difficult to conceive that the Juvenile was not aware of the consequences.

As the FIR lodged in the present case would reveal, the deceased was liable to pay to the accused No. 1 and as he did not pay back, all the accused persons including the present Petitioner went to his house, forcibly took him away to another village and assaulted him with kicks, lathies and iron pipes.

The issue that emerges is whether in such a situation, can it be conceived by any stretch of imagination that the Petitioner was not aware of the consequences? Or for that matter, was it a crime committed, if proven, with a mind that was not matured enough? Or the life of the victim is totally immaterial, for five people, including a juvenile, think unless somebody pays the debt, he can face his death.

The rate of crime and the nature of crime in which the juvenile are getting involved for which the Union of India and the State Governments are compelled to file cases before this Court to which the learned Attorney General does not disagree, have increased. A time has come to think of an effective law to deal with the situation, we would request the learned Attorney General to bring it to the notice of the concerned authorities so that the relevant provisions under the Act can be re-looked, re-scrutinized and re-visited, at least in respect of offences which are heinous in nature.

2014(4)SCALE305, (2014)8SCC390

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 695 of 2014 (Arising Out of SLP (Crl.) No. 1953 of 2013) and W.P. (Crl.) No. 204 of 2013

Decided On: 28.03.2014

Subramanian Swamy and Ors. Vs. Raju Thr. Member Juvenile Justice Board and Anr.

Hon'ble Judges/Coram: P. Sathasivam, C.J.I., Ranjan Gogoi and Shiva Kirti Singh, JJ.

SLP (Crl.) No. 1953 of 2013

In the backdrop of the 2012 Delhi Gang Rape, the Petitioners had instituted a writ proceeding before the High Court of Delhi, which was registered a Writ Petition seeking the following reliefs:

i. Laying down an authoritative interpretation of Sections 2(I) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general.

ii. That the definition of offences Under Section 2(p) of the Act be categorized as per grievousness of the crime committed and the threat of public safety and order.

iii. That Section 28 of the Act be interpreted in terms of its definition, i.e., alternative punishment and serious offences having minimum punishment of seven years imprisonment and above be brought outside its purview and the same should be tried by an ordinary criminal court.

iv. Incorporating in the Act, the International concept of age of criminal responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age.

v. That the instant Act be read down in consonance with the rights of victim as protected by various fundamental rights including Article 14 and 21 of the Constitution of India. (sic)

The High Court by its order dismissed the writ petition holding that against the order of the Juvenile Justice Board the alternative remedies available under the Act should be exhausted in the first instance and in the course thereof the question of interpretation of the provisions of the Act can well be considered. The Petitioners thereafter filed a Special Leave Petition before the Supreme Court challenging the aforesaid order of the High Court of Delhi.

Writ Petition (Crl.) No. 204 of 2013

This writ petition has been filed by the parents of the victim of the 2012 Delhi Gang Rapeincident that had occurred on 16.12.2012 seeking the following reliefs:

(i) a Direction striking down as unconstitutional and void the Juvenile Justice (Care and Protection of Children) Act 2000 (Act No. 56 of 2000) to the extent it puts a blanket ban on the power of the criminal courts to try a juvenile offender for offences committed under the Indian Penal Code, 1860; and

(ii) a Direction that the Respondent No. 2 be tried forthwith by the competent criminal court for the offences against the daughter of the Petitioners in F.I.R. No. 413/12, P.S. Vasant Vihar, New Delhi Under Sections 302/365/376(2)G/377/307/394/395/397/396/412/201/120B/34 Indian Penal Code.

Decision of the Supreme Court

a) Constitutional Validity of the Juvenile Justice Act

The constitutional validity of the Act has been upheld in *Salil Bali v. Union of India (2013) 4 SCC 705*and it is not necessary to revisit the said decision even if it be by way of a reference to a larger Bench. In Salil Bali (supra) the constitutional validity of the Act, particularly, Section 2(k) and 2(l) thereof was under challenge, inter alia, on the very same grounds as have now been advanced before us to contend that the Act had to be read down. In Salil Bali (supra) a coordinate Bench did not consider it necessary to answer the specific issues raised before it and had based its conclusion on the principle of judicial restraint that must be exercised while examining conscious decisions that emanate from collective legislative wisdom like the age of a

juvenile. Notwithstanding the decision of this Court in *Kesho Ram and Ors. v. Union of India and Ors. (1989) 3 SCC 151* holding that, "the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision..." (para 10) the issue of res judicata was not even remotely raised before us. In the field of public law and particularly when constitutional issues or matters of high public interest are involved, the said principle would operate in a somewhat limited manner; in any case, the Petitioners in the present proceeding were not parties to the decision rendered in Salil Bali (supra). Therefore, we deem it proper to proceed, not to determine the correctness of the decision in Salil Bali (supra) but to consider the arguments raised on the point of law arising. While doing so we shall certainly keep in mind the course of action that judicial discipline would require us to adopt, if need be.

b) Effect of the recommendations of the Justice J.S. Verma Committee so far as the age of a juvenile is concerned.

The terms of reference to the Justice J.S. Verma Committee were indeed wide and it is correct that the Committee did not recommend reduction of the age of juveniles by an amendment of the provisions of the Act. However, the basis on which the Committee had come to the above conclusion is vastly different from the issues before this Court. The recommendations of the Justice J.S. Verma Committee which included the negative covenant so far as any amendment to the JJ Act is concerned was, therefore, in a different context though we must hasten to add the views expressed would undoubtedly receive our deepest consideration while dealing with the matter in hand.

c) Interpretation of the Juvenile Justice Act

The Act, as manifestly clear from the Statement of Objects and Reasons, has been enacted to give full and complete effect to the country's international obligations arising from India being a signatory to the three separate conventions delineated hereinbefore, namely, the Beijing Rules, the UN Convention and the Havana Rules. Notwithstanding the avowed object of the Act and other such enactments to further the country's international commitments, all of such laws must

necessarily have to conform to the requirements of a valid legislation judged in the context of the relevant constitutional provisions and the judicial verdicts rendered from time to time. Also, that the Act is a beneficial piece of legislation and must therefore receive its due interpretation as a legislation belonging to the said category has been laid down by a Constitution Bench of this Court in *Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551*. In other words, the Act must be interpreted and understood to advance the cause of the legislation and to confer the benefits of the provisions thereof to the category of persons for whom the legislation has been made.

Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality.

It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into

play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.

In the present case there is no difficulty in understanding the clear and unambiguous meaning of the different provisions of the Act. There is no ambiguity, much less any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them. A class of persons is sought to be created who are treated differently. This is being done to further/effectuate the views of the international community which India has shared by being a signatory to the several conventions and treaties already referred to.

Classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner, differences inter se and within the under 18 category may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical accuracy will not exist in any categorization. But such precision and accuracy is not what Article 14 contemplates. The above principles have been laid down by this Court in a plethora of judgments and an illustrative reference to some may be made by recalling the decisions in *Murthy Match Works and Ors. v. The Asstt. Collector of Central Excise and Anr. (1974) 4 SCC 428, Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors. 1989 Supp (1) SCC 116, Kartar Singh v. State of Punjab (1994) 3 SCC 569, Basheer alias N.P. Basheer v. State of Kerala (2004) 3 SCC 609, B. Manmad Reddy and Ors. v. Chandra Prakash Reddy and Ors. (2010) 3 SCC 314, Transport and Dock Workers Union and Ors. v. Mumbai Port Trust and Anr. (2011) 2 SCC 575*.

If the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act

is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with Article 14. The Act, therefore, need not be read down, as suggested, to save it from the vice of unconstitutionality for such unconstitutionality does not exist. . If the legislature has adopted the age of 18 as the dividing line between juveniles and adults and such a decision is constitutionally permissible the enquiry by the Courts must come to an end. Even otherwise there is a considerable body of world opinion that all under 18 persons ought to be treated as juveniles and separate treatment ought to be meted out to them so far as offences committed by such persons are concerned. The avowed object is to ensure their rehabilitation in society and to enable the young offenders to become useful members of the society in later years. India has accepted the above position and legislative wisdom has led to the enactment of the JJ Act in its present form. If the Act has treated all under 18 as a separate category for the purposes of differential treatment so far as the commission of offences are concerned, we do not see how the contentions advanced by the Petitioners to the contrary on the strength of the thinking and practices in other jurisdictions can have any relevance.

The Act does not do away or obliterate the enforcement of the law insofar as juvenile offenders are concerned. The same penal law i.e. Indian Penal Code apply to all juveniles. The only difference is that a different scheme for trial and punishment is introduced by the Act in place of the regular provisions under the Code of Criminal Procedure for trial of offenders and the punishments under the Indian Penal Code.

Elaborate statistics have been laid before us to show the extent of serious crimes committed by juveniles and the increase in the rate of such crimes, of late. We refuse to be tempted to enter into the said arena which is primarily for the legislature to consider. Courts must take care not to express opinions on the sufficiency or adequacy of such figures and should confine its scrutiny to the legality and not the necessity of the law to be made or continued.

2013(9)SCALE140, (2013)7SCC705

IN THE SUPREME COURT OF INDIA

Writ Petition (C) Nos. 10, 14, 42, 85, 90 and 182 of 2013, Writ Petition (Crl) No. 6 of 2013 and T.C. (C) No. 82 of 2013 (Under Article 32 of the Constitution of India)

Decided On: 17.07.2013

Salil Bali Vs. Union of India (UOI) and Anr.

Hon'ble Judges/Coram: Altamas Kabir, C.J.I., S.S. Nijjar and Jasti Chelameswar, JJ.

Writ petitions under Article 32 of the Constitution of India seeking declaration of Juvenile Justice (Care and Protection of Children) Act, 2000 as ultra vires to provisions of the Constitution and to take steps to bring change in said Act in conformity with provisions of Constitution and United Nations Standard Minimum Rules for administration of juvenile justice due to rising graph of criminal activity of juveniles below age of 18 years

Held

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.

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. 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. 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. 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(l) in the manner in which it exists in the Statute Book.

The general misunderstanding 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. The said understanding needs to be clarified on account of the amendment to the Juvenile Justice Act in 2006 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.

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 reintegrated 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.

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(l) 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.

II

GRANT OF BAIL UNDER SECTION 12 OF THE JJ ACT

MANU/PH/3192/2013

IN THE HIGH COURT OF PUNJAB AND HARYANA

Crl. Rev. No. 717 of 2013 (O&M)

Decided On: 19.03.2013

Ajit Vs. State of Haryana

Hon'ble Judges/Coram: Mahesh Grover, J.

The court has the discretion to ordinarily release a juvenile on bail but can also decline it if it has reasonable ground to believe that his release is likely to bring him into association with any known criminal or expose him to moral, physical and psychological danger or that his release would defeat the ends of justice.

The allegations against the petitioner are that he subjected two minor girls to rape over a period of 10 days. There is also material on record to suggest that his immediate family members are involved in criminal activities and facing prosecution in case registered vide FIR No. 149 dated 30.4.2007 under sections 147, 149, 323, 324, 506, 452 IPC. When both i.e. the act of the petitioner and the involvement of the immediate family members of the petitioner in criminal activities are evaluated together, then the court cannot overlook the fact that the petitioner would be in some sort of physical danger in case there is retribution from the family of the minor girls who have been subjected to rape. Besides, the petitioner in any case would be exposed to bad influence from his immediate family members who themselves are involved in criminal activities. There is reasonable apprehension in the mind of the court that it would be safe to keep the petitioner in confine rather to expose him to the probability of physical danger and abusive influence within the family. Before parting with the order, this Court directs that the petitioner be got examined from a competent psychiatrist/psychologist who will evaluate the conduct of the petitioner. It is imperative that the Juvenile Justice Board should not only look at the age of the accused (juvenile) when determining the issue of release of such a juvenile on bail but should also evaluate the mental condition and capabilities of such a juvenile which factors

predominantly help to fathom the gravity of the offence and the capability and propensity of the perpetrator which in turn becomes relevant at the time of sentencing.

This Court has taken a view in *Shimil Kumar v. State of Haryana MANU/PH/2808/2013 –*

> *When we proceed to determine whether a person is a juvenile, it would depend upon both, his physical growth which exemplifies adolescence coupled with his behaviour, with emphasis on the latter, because it is his conduct or rather grave misconduct that has brought him in conflict with law and society. […] Declaration of the age of the child who is in conflict with law by mere reliance upon a School Leaving Certificate or even a positive proof of the certificate of registration of birth ipso facto should not be the foundational basis to declare a person juvenile more particularly, when such a juvenile is accused of having committed a heinous offence particularly when days or few months separated him from adulthood. […] The competence of a juvenile has to be established before the Board and the Board and the courts ought not to automatically assume that the statutory definition would confer the halo of a juvenile and give him an undeserving protection and benefits. Apart from determining such abilities, an enquiry should also establish the social factors surrounding such a person in conflict with law, as they also possibly may reveal the cause of a distorted or a perverted mind set, which may eventually lead to an appreciation of the ability of correct comprehension. After the Juvenile Justice Board and the court concerned have addressed the afore-expressed concern which can be achieved by involving a professional psychologist/psychiatrist and sociologists, the Board can then proceed to determine the second aspect as to whether to release a juvenile on bail which would now be dependent upon the first question because if a person is found capable of comprehending what is right and wrong, and is enabled to understand sufficiently his actions, then as an automatic corollary it should follow that release of such a person on bail would defeat the ends of justice and the remaining aspects of the likelihood of a child coming into contact with any known criminal or exposing him to moral, physical or psychological danger, would be questions dependent solely on factors and inferences which such facts may throw up. […] Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being*

endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile.

In the instant case, the Board and the Court both did not resort to such an exercise which would conclusively address the concerns expressed in. The matter is thus remitted back to the Juvenile Justice Board to take into consideration the aspects noticed above keeping in view the serious offences of which the petitioner has been accused of. The petition is therefore, rejected with a direction that the matter be re-considered in the light of the above.

MANU/UP/1492/2012

IN THE HIGH COURT OF ALLAHABAD

Criminal Revision No. 4565 of 2010

Decided On: 28.05.2012

Kamlesh Kumar @ Ankush Vs. State of U.P. and Another

Hon'ble Judges/Coram: Surendra Kumar, J.

The Courts below rejected the bail application of the revisionist on the ground that there appears to be 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. The rejection of the bail application of the revisionist by the Courts below by the aforesaid judgment and order is based on the report of the District Probation Officer mentioning therein that there are sufficient grounds for believing that if the revisionist is released on bail he will come into association with any known criminal. Apart from the report of District Probation Officer there is no other material to support this fact.

Considering the aforesaid facts and circumstances the impugned judgment and order passed by the Sessions Judge, Kanpur Nagar and the order passed by the Juvenile Justice Board are illegal and suffer from perversity and the same are hereby set aside. Keeping in view the welfare of the revisionist with a hope that he may recover himself, he is entitled for bail

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MANU/RH/0663/2010

IN THE HIGH COURT OF RAJASTHAN (JAIPUR BENCH)

Decided On: 10.08.2010

Sachin Vs. State of Rajasthan

Hon'ble Judges/Coram: Satya Prakash Pathak, J.

Inquiry in relation to age of the petitioner Sachin was conducted and it was found that he was juvenile, therefore, an application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 on behalf of the petitioner through his father was filed for grant of bail before the Juvenile Justice Board. The application was rejected for the reason that the offence was under the provisions of Section 8/15 of the NDPS Act and a possibility was there that the accused may again come in contact with known criminals.

Section 12 of the Act would indicate that if a juvenile is arrested or detained or appears or is brought before a Board, such person shall be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution. The language of Section 12 of the Act using the word 'shall', is mandatory and it provides non-obstante clause by using the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force", which conveys the intention of the legislature to grant bail to the juvenile irrespective of nature or gravity of the offence alleged to have been committed by him and the bail can be denied only in the case where 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.

In both the impugned orders no exceptional circumstance as indicated in Section 12 of the Act to decline bail to the juvenile is made out. The learned Magistrate as well as learned appellate court have not properly appreciated the mandatory provisions of Section 12 of the Act and other provisions in relation to the juvenile and merely on the basis of apprehension the bail has been declined. In my opinion, the Act being a beneficiary and social oriented legislation should be given full effect by all concern whenever the matter relating to juvenile comes for consideration before them.

It is directed that the accused-petitioner shall be released on bail on furnishing a personal bond by his natural guardian (father) in the sum of Rs. 10,000/- and a surety in the like amount to the satisfaction of the Principal Magistrate, Juvenile Justice Board, Jaipur with the stipulation that on all subsequent dates of hearing he shall appear before the said Court or any other Court during pendency of inquiry in the case and that the guardian shall keep proper look after of the delinquent child and keep him away from the company of known criminals.

_____.

MANU/PH/0997/2005

IN THE HIGH COURT OF PUNJAB AND HARYANA

Criminal Misc. No. 40473-M of 2005

Decided On: 09.09.2005

Parveen @ Fattey Vs. State of Haryana

Hon'ble Judges/Coram: K.S. Grewal, J.

Parveen alias Fateh is a juvenile and is before the Juvenile Justice Board, Sonepat where an enquiry against him is in progress. He was last produced before the Board in custody on September 5, 2005 and was directed to be produced again on September 19, 2005. During the interim period he was kept in protective custody.

It was for the Juvenile Justice Board to enquire if juvenile had committed the offence. The enquiry against the juvenile is in progress but it is more than 4 months and it had not been completed.

Proviso to Section 14 of the Juvenile Justice (Care and Protection of the Children) Act, 2000 states that enquiry under Section 14 shall be completed within a four months unless the period is extended, having regard to the circumstances of the case and after recording reasons in writing for such extension. There appears to be no special reason which may require the inquiry to carry on for longer than four months. Therefore, the enquiry must be completed expeditiously not later October 31, 2005.

However, further detention of the juvenile in custody may cause him more than good. If the Petitioner is released on bail and allowed to return home then the soothing effect of love and affection of his parents and family may be of some help in softening his attitude towards society and may not expose him to further psychological harm.

Under the circumstances Petitioner is admitted to bail. He shall be released on bail on furnishing adequate surety to the satisfaction of the Principal Magistrate, Juvenile Justice Court, Sonepat.

III

AGE DETERMINATION UNDER JJ ACT

2015(3)SCALE659

IN THE SUPREME COURT OF INDIA

Criminal Misc. Petition No. 17870 of 2014 in Special Leave Petition (Crl.) No. 2838 of 2000

Decided On: 16.03.2015

Abdul Razzaq Vs. State of U.P.

Hon'ble Judges/Coram: T.S. Thakur and A.K. Goel, JJ.

Benefit of retrospective effect of Sections 7-A and 20 of Juvenile Justice (Care and Protection of Children) Act, 2000 - Present application filed seeking release of Petitioner who had been found to be juvenile - Whether the Petitioner was entitled to benefit of provisions of Act which have changed with retrospective effect.

Held,

A person below 18 years at the time of the incident can claim benefit of the Act any time. Even if a person was not entitled to the benefit of juvenilities under the 1986 Act or the present Act prior to its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be claimed even if a matter has been finally decided.

MANU/SC/0679/2015

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 576 of 2015 (Arising out of Special Leave Petition (Criminal) No. 6366/2014)

Decided On: 06.04.2015

Basant Sharma Vs. State of Bihar

Hon'ble Judges/Coram: Ranjan Gogoi and N.V. Ramana, JJ.

Appeal against conviction under Section 376 of the Indian Penal Code, 1860 on the grounds that on the date of occurrence the appellant was a juvenile as per the date of birth recorded in the admit card issued by the Bihar School Examination Board, Patna for the Annual Secondary School Examination.

Held,

Though the aforesaid question was not raised at any earlier stage, the same would not foreclose the entitlement of the Appellant to raise the same in the present appeal.

The admit card produced by the Appellant in support of his claim of date of birth has been verified by the Bihar School Examination Board, Patna. By communication dated 20th February, 2015 addressed to the Registry of this Court by the Secretary, Bihar School Examination Board, Patna, the contents of the admit card including the date of birth of the Appellant has been certified to be correct.

An objection has been raised on behalf of the State that an admit card issued by the Board is not one of the documents mentioned in the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003 for the purpose of determining the question as to whether the accused Appellant is juvenile.

Held, the admit card having been duly verified and authenticated by the Board itself the same can be acted upon as a safe and reasonable basis for arriving at the conclusion that he was a juvenile on the date of the occurrence

Following the ratio laid down in *Jitendra Singh alias Babboo Singh and Anr. v. State of Uttar Pradesh* (2013) 11 SCC 193, the conviction of accused Appellant Under Section 376 of the Indian Penal Code, 1860 is upheld. The matter will now have to be remanded to the Juvenile Justice Board for consideration of the punishment that the accused Appellant will have to suffer under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

MANU/WB/0367/2015

IN THE HIGH COURT OF CALCUTTA

C.R.A. 223 of 2005

Decided On: 20.02.2015

Biren Sarkar and Ors. Vs. The State of West Bengal

Hon'ble Judges/Coram: Indira Banerjee and Sahidullah Munshi, JJ.

In every case concerning a child or a juvenile in conflict with law, the age determination enquiry has to be conducted in the manner stipulated in Rule 12(3), by reliance upon the following documents in order of priority.

(i) Matriculation or equivalent certificates if available,

(ii) If matriculation or equivalent certificate is not available, then the certificate from the School first attended, certifying the Date of Birth recorded by the School.

(iii) Birth Certificate given by a corporation or municipal authority or Panchayat.

(iv) In the absence of any of the above documents, the medical opinion is to be sought from a duly constituted Medical Board, which will declare the age of the juvenile.

In case exact assessment of the age cannot be done, the Court or the Juvenile Justice Board or, as the case may be, the Child Welfare Committee, for 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.

It is well settled that defence of juvenility can be taken at any time as held by the Supreme Court in *Gopinath Ghosh Vs. State of West Bengal* reported in 1984 Suppl. SCC 228, *Abuzar Hossain Vs. State of West Bengal* reported in (2012) 10 SCC 489 and *Pradip Kumar Vs. State of U.P.* reported in (1995) Suppl. 4 SCC 419.

In the instant case, the accused appellant No. 1 did not have a Matriculation Certificate or any equivalent certificate and there was no question of production of such a certificate. The Sessions Court also rightly did not accept the Certificate of the School, as it was not the School first

attended by the accused appellant. Furthermore the learned Court rightly noticed infirmities in the school records, which rendered the Certificate unreliable. The accused appellant No. 1 also could not furnish any Birth Certificate given by any municipal authority or Panchayat or the Corporation. However, even if the School Certificate could not be relied upon, it was incumbent upon the Sessions Court to seek medical opinion of a duly constituted Medical Board. This was not done.

It is incumbent to conduct a proper enquiry into the age of the accused appellant No. 1, as the jurisdiction of the Sessions Court to proceed with the trial against the accused appellant No. 1 and to convict the accused appellant No. 1, would depend on whether he was a juvenile at the time of commission of the alleged offence or not.

The Sessions Court shall reconsider the claim of the accused appellant No. 1 to juvenility in accordance with Rule 12 of the Juvenile Justice (Protection and Care) Rules 2007, by taking into account the documents specified in the said Rule, if available, and if not, by obtaining medical opinion. The Sessions Court shall submit its report to this Court, within 30 days from the date of communication of this judgment and order, after which the appeal against the conviction of this appellant, under Section 302 and 324 shall be heard and disposed of.

2015(1)SCALE59

IN THE SUPREME COURT OF INDIA

Crl. A. No. 1845 of 2013

Decided On: 05.01.2015

State of Bihar Vs. Chhotu Pandey

Hon'ble Judges/Coram: J.S. Khehar and S.A. Bobde, JJ.

In terms of the mandate contained in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, in the event of the claim of juvenility being ascertainable on the basis of a matriculation certificate, it is not open to the opposite party to demand a medical examination for establishing the age of the accused/convict. Insofar as the instant aspect of the matter is

concerned, this Court, having considered the matter in *Ashwani Kumar Saxena v. State of Madhya Pradesh (2012) 9 SCC 750,* observed as under:

> "32. "Age determination inquiry contemplated Under Section 7-A of the Act read with 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 needs to 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 needs to 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."

2015(1)SCALE132, (2015)2SCC775

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 513 of 2008

Decided On: 08.01.2015

Darga Ram Vs. State of Rajasthan

Hon'ble Judges/Coram:T.S. Thakur and R. Banumathi, JJ.

Application filed by the Appellant in this Court seeking to raise a plea that the Appellant was a juvenile on the date of the commission of offence hence entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000. Since the Appellant did not have any documentary evidence like a school or other certificate referred to under the Act mentioned above, this Court had directed the Principal, Government Medical College, Jodhpur, to constitute a Board of

Doctors for medical examination including radiological examination of the Appellant to determine the age of the Appellant as in April, 1998 when the offence in question was committed.

The Appellant is reported to be a deaf and dumb. He was never admitted to any school. There is, therefore, no officially maintained record regarding his date of birth. Determination of his age on the date of the commission of the offence is, therefore, possible only by reference to the medical opinion obtained from the duly constituted Medical Board in terms of Rule 12(3) (b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

From the opinion tendered by the Board that the Appellant's age has been placed in the range of 30 to 36 years. It was argued that even if one were to accept the average of the two estimates in the range of 30-36 years, mentioned by the Medical Board, he was a juvenile on the date of the occurrence being only 17 years, 2 months hence entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The Medical Board has not been able to give the exact age of the Appellant on medical examination no matter advances made in that field. That being so in terms of Rule 12 (3) (b) the Appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the Appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the Appellant in a range of 30 to 36 years as on the date of the medical examination. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the Appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the Appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart

even if the age of the Appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the Appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3) (b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.

In the totality of the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the Appellant to be a juvenile as on the date of the occurrence no matter the offence committed by him is heinous and but for the protection available to him under the Act the Appellant may have deserved the severest punishment permissible under law. The fact that the Appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail one who has been found guilty of rape and murder of an innocent young child.

The conviction of the Appellant for offences under Section 302 and 376 of Indian Penal Code is affirmed the sentence awarded to him shall stand set aside with a direction that the Appellant shall be set free from prison unless required in connection with any other case.

MANU/SC/0865/2015

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 13 of 2015 (Arising from SLP (Crl.) No. 31 of 2015 @ Crl. M.P. No. 19269 of 2014)

Decided On: 05.01.2015

Nagendra Vs. State of Uttar Pradesh

Hon'ble Judges/Coram: J.S. Khehar and S.A. Bobde, JJ.

Whether the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 should be given on the basis of School Leaving Certificate

The issue of juvenility under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 has to be determined under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

A school leaving certificate is not a relevant consideration to determine the juvenility of an accused/convict Under Rule 12(3) thereof. The afore-mentioned statutory provision was not considered by this Court while deciding Ranjeet Goswami's case (*Ranjeet Goswami v. State of Jharkhand and Anr.(2014) 1 SCC 588).* The same cannot therefore be any precedential value in terms of the statutory provisions.

2015(1)SCALE117

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 2621 of 2014

Decided On: 16.12.2014

Mahesh Jogi Vs. State of Rajasthan

Hon'ble Judges/Coram: F.M. Ibrahim Kalifulla and Abhay Manohar Sapre, JJ.

This Court has held in a number of decisions as to what would be the effect of the Juvenile Justice (Care and Protection of Children) Act, 2000. The age of a juvenile has been amended by which the age which was prescribed as 16 years to be a juvenile was revised as 18 years under the Act of 2000. When conviction came to be imposed on an accused, prior to the coming into force of the Act of 2000, and a claim as to his status as a juvenile at the subsequent stages, whether the protection or the benefits can be made available to him as a juvenile by virtue of the coming into force of the Act of 2000.

In *Hariram v. State of Rajasthan (2009) 13 SCC 193*, it was ultimately held:

> *...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.

Therefore, after the coming into force of the Act of 2000, a juvenile who had not completed 18 years of age on the date of the commission of the offence was entitled to the benefits of the said Act.

In the present case, the Appellant was only 17 years 4 months on date of commission of offence and was entitled for the benefit of the Act of 2000. Since notice was issued in this appeal by way of special leave confining to the question as to whether the Appellant was entitled for the benefit as a juvenile and by a decision reported in *Jitendra Singh alias Babboo Singh and Anr. v. State of Uttar Pradesh (2013) 11 SCC 193*, it was made clear that such benefit would only enure to the extent of the sentence imposed on the Appellant, there is no scope for interfering with the conviction imposed on the Appellant.

In the light of the decision in *Ajay Kumar v. State of Madhya Pradesh (2010) 15 SCC 83*, the Appellant is referred to the Juvenile Justice Board and while setting aside the sentence awarded to him without interfering with the conviction, the Juvenile Justice Board is directed to pass appropriate orders Under Section 15 of the Act as regards the sentence to be undergone by the Appellant. The said exercise shall be carried out by the Juvenile Justice Board expeditiously preferably within one month from the date of receipt of a copy of this order.

2013(11)SCALE577, (2014)1SCC588

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1465 of 2013 (Arising out of Special Leave Petition (Criminal) No. 10661 of 2010)

Decided On: 18.09.2013

Ranjeet Goswami Vs. State of Jharkhand and Anr.

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and A.K. Sikri, JJ.

No cogent reasons have been stated by the High court to discard the school leaving certificate which was issued on 10.04.2004 by the then Principal of the school. The certificate reveals the date of birth of the accused as 10.05.1991. The school leaving certificate was proved by examining the head mistress of the school. She has recognized the signatures of the principal who issued the school leaving certificate. The evidence adduced by the head mistress was not challenged. Consequently, there is no reason to discard that document. Further, we notice that there was some confusion as to whether the Appellant, whose name is Ranjeet Goswami is the same person Rajiv Ranjan Goswami. The investigating officer's report indicates that they are different persons. Consequently we have to take it that the school leaving certificate produced was in respect of the Appellant which has been proved.

We, therefore, find no reason to reject the school leaving certificate. If that be so, as per the ratio laid down in ***Ashwani Kumar Saxena*** (supra) there is no question of subjecting the accused to a medical examination by a medical board. Going by the school leaving certificate since the Appellant was a juvenile on the date of occurrence, he can be tried only by the JJ Board.

2013(9)SCALE487

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 556 of 2004

Decided On: 18.07.2013

Ketankumar Gopalbhai Tandel Vs. State of Gujarat

Hon'ble Judges/Coram:

K.S. Panicker Radhakrishnan and Pinaki Chandra Ghose, JJ.

The question that falls for consideration in this appeal is whether or not the Appellant, who was admittedly not a juvenile within the meaning of the Juvenile Justice Act, 1986 (for short 'the 1986 Act') when offences were committed but had not completed 18 years of age, on that date, will be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short

'the 2000 Act') and be declared as a juvenile in relation to the offences alleged to have been committed by him.

The Appellant was not juvenile on the date of occurrence. Such a view was taken on the basis of the 1986 Act. If we apply the provisions of the 1986 Act then the Appellant was not a juvenile on the date of the crime but if we apply Sections 2(k), 2(l), 7-A, 20 and 49 of the 2000 Act read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 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 is raised after they have attained the age of 18 years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted.

So far as the present case is concerned, as already indicated, the age of the Appellant as on the date of the commission of the offence i.e. 06.05.1995 was 17 years, 11 months and 5 days and hence less than 18 years, and hence when we apply provisions of the 2000 Act, the Appellant has to be treated as a juvenile, being less than 18 years of age on the date of the crime and hence entitled to get the benefit of the provisions of the 2000 Act read with Rules.

We are therefore inclined to affirm the order of conviction, however, the sentence awarded by the trial court and confirmed by the High Court is set aside and the matter is sent to the concerned Juvenile Justice Court for imposing adequate sentence.

2013(7)SCALE764, (2013)7SCC263

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1209 of 2010

Decided On: 01.07.2013

Jarnail Singh Vs. State of Haryana

Hon'ble Judges/Coram: P. Sathasivam and J.S. Khehar, JJ.

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).

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. 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.

Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix 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 on the next available basis, in the sequence of

options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced evidence of the Head Master of the School where the prosecutrix had studied upto class 3. 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 Therefore, it is clear, that the prosecutrix was less than 15 years old on the date of occurrence In the said view of the matter, there is no room for any doubt that the prosecutrix was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix 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.

2012(8)SCALE447, (2012)8SCC800

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1349 of 2012 (Arising out of SLP (Crl.) No. 9023 of 2010)

Decided On: 04.09.2012

Babla @ Dinesh Vs. State of Uttarakhand

Hon'ble Judges/Coram: H.L. Dattu and C.K. Prasad, JJ.

Appeal against the order of conviction under Section 302 read with Section 149 of Indian Penal Code, 1860 and the subsequent confirmation of order of conviction by the High Court - Held,

The issue of raising the plea for determination of juvenility for the first time at the appellate stage is no more *res integra*. This Court in *Lakhan Lal v. State of Bihar* (2011) 2 SCC 251, has allowed such plea raised before this Court for the first time and, taking note of its previous decisions on this point, has observed thus:

The fact remains that the issue as to whether the Appellants were juvenile did not come up for consideration for whatever reason, before the Courts below. The question is whether the same could be considered by this Court at this stage of the proceedings. A somewhat similar situation had arisen in Umesh Singh and Anr. v. State of Bihar (2000) 6 SCC 89 wherein this Court relying upon the earlier decisions in Bhola Bhagat v. State of Bihar (1997) 8 SCC 720, Gopinath Ghosh v. State of W.P. 1984 Supp. SCC 228 and Bhoop Ram v. State of U.P. (1989) 3 SCC 1, while sustaining the conviction of the Appellant therein under all the charges, held that the sentences awarded to them need to be set aside. It was also a case where the Appellant therein was aged below 18 years and was a child for the purposes of the Bihar Children Act, 1970 on the date of the occurrence.

The Supreme Court affirmed the decision of the Supreme Court in *Lakhan* Lal's case. On the basis of the report of the learned Additional Sessions Judge which is made after holding due inquiry as required under the Act and the Rules, the Supreme Court held the that the appellant was juvenile, as envisaged under the Act and the Rules framed thereunder, on the date of commission of the offence.

The Jail Custody Certificate, produced by the Appellant suggests that he has undergone the actual period of sentence of more than three years out of the maximum period prescribed under Section 15 of the Act. In the circumstance, while sustaining the conviction of the Appellant for the aforesaid offences, the sentence awarded to him by the Trial Court and confirmed by the High Court is set aside.

AIR2013SC1, 2012(11)SCALE595

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1971 of 2012 (Arising out of Special Leave Appeal (Crl.) No. 9343 of 2011)

Decided On: 03.12.2012

Jodhbir Singh Vs. State of Punjab

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Dipak Misra, JJ.

In ***Ashwani Kumar Saxena*** case (supra), this Court has explained how "Age determination inquiry" has to be conducted under Section 7A of the JJ Act read with Rule 12 of the JJ Rules -

> *"Age determination inquiry" contemplated under Section 7A of the Act read with 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 needs to 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 needs to 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. 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-rule (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 Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.*

In a case where genuineness of the school leaving certificate has not been questioned, the Sessions Court and the High Court were not justified in placing reliance on certain statements made by mother of the accused in the cross-examination. The Sessions Court also committed an error in placing reliance on the certificate issued by the village Chowkidar. When the law gives prime importance to the date of birth certificate issued by the school first attended, the

genuineness of which is not disputed, there is no question of placing reliance on the certificate issued by the village Chowkidar.

2012(5)SCALE47, (2012)12SCC307

IN THE SUPREME COURT OF INDIA

Crl.A. No. 694 of 2012 (Arising out of SLP(Crl) No. 261 of 2012)

Decided On: 24.04.2012

Ishtikhar Vs. State of U.P.

Hon'ble Judges/Coram: H.L. Dattu and Anil R. Dave, JJ.

This appeal is directed against the judgment and order passed by the High Court of Judicature at Allahabad in the second bail application preferred by the Appellant. By the impugned judgment, the High Court has observed that the said application filed by the Appellant, inter alia, claiming himself to be a juvenile at the time of the incident, would be considered at the time of hearing of the main appeal on merits.

Held,

A bare perusal of the Act and the Rules framed thereunder would give a clear indication that whenever a claim is made that a person was juvenile at the time of the incident, the same has to be considered at the earliest by following the provisions of the Act and the Rules framed thereunder and the same cannot be postponed till the appeal is finally heard.

The entire object and purpose of the Juvenile Justice Act which is in the nature of beneficial legislation, would be defeated and frustrated, if the application for determination of the Juvenility of the accused is postponed indefinitely. The determination of accrual of benefits under this Act must be ascertained at earliest; otherwise it would amount to depriving a person, in case his juvenility at the time of offence is confirmed, from enjoying his legal and

constitutional rights and protection flowing from this Act. Therefore, Section 7A of the Act is very wide in its ambit to encompass the ascertainment of the question of juvenility of an accused/person, at any stage even after the disposal of the case.

The determination of the juvenility of the accused is a jurisdictional question for the Courts to proceed on the merits of the case. Therefore, it is always desirable for the Courts to determine the question of juvenility at the first instance. In this regard Section 7A (2) provides that if the accused is found juvenile at the time of offence, even after the sentence has been passed by a Court, then such sentence would be deemed to have no effect and accused would be forwarded to the juvenile board for appropriate orders.

Equivalent Citation: AIR2013SC1020, 2012(10)SCALE101, (2012)10SCC489

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 654 of 2002, 1397 of 2003 and 1193 of 2006, SLP (Crl.) Nos. 1451 of 2003, 8768 and 8855 of 2011 and 616 of 2012 and R.P. (Criminal) No. 390 of 2010 in SLP (Crl.) No. 2542 of 2010

Decided On: 10.10.2012

Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal

Hon'ble Judges/Coram: R.M. Lodha, Anil R. Dave and T.S. Thakur, JJ.

R.M. Lodha, J.

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. 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), the Bench found that there was substantial discordance in the approach of the matter on the question of juvenility in *Gopinath Ghosh* 1984 (Supp) SCC 228 on the one hand and the two decisions of this Court in *Akbar Sheikh*: (2009) 7 SCC 415 and *Hari*

Ram v. *State of Rajasthan and Anr*. (2009) 13 SCC 211. 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 Sheikh* (2009) 7 SCC 415 and *Gopinath Ghosh* 1984 (Supp) SCC 228 had been rendered by co-ordinate Benches of this Court. This is how these matters have come up before us.

Held,

(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 Sheikh* (2009) 7 SCC 415 and *Pawan* (2009) 15 SCC 259 these documents were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 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.

T.S. Thakur, J.

In cases in which the accused setting up the plea of juvenility is unable to produce any one of the documents referred to in Rule 12(3)(a)(i) to (iii) of the Rules, under the Act, not necessarily because, he is deliberately withholding such documents from the court, but because, he did not have the good fortune of ever going to a school from where he could produce a certificate regarding his date of birth. An affidavit of a parent or a sibling or other relative would not ordinarily suffice, to trigger an enquiry into the question of juvenility of the accused, unless the circumstances of the case are so glaring that the court is left with no option except to record a prima facie satisfaction that a case for directing an enquiry is made out. What would constitute a

'glaring case' in which an affidavit may itself be sufficient to direct an inquiry, is a question that cannot be easily answered leave alone answered by enumerating exhaustively the situations where an enquiry may be justified even in the absence of documentary support for the claim of juvenility. Two dimensions of that question may all the same be mentioned without in the least confining the sweep of the expression 'glaring case' to a strait-jacket formulation. The first of these factors is the most mundane of the inputs that go into consideration while answering a claim of juvenility like "Physical Appearance" of the accused made relevant by Rule 12(2) of the Rules framed under the Act.

Physical appearance of the accused is a consideration that ought to permeate every determination under the Rule aforementioned no matter appearances are at times deceptive, and depend so much on the race or the region to which the person concerned belongs. Physical appearance can and ought to give an idea to the Court at the stage of the trial and even in appeal before the High Court, whether the claim made by the accused is so absurd or improbable that nothing short of documents referred to in this Rule 12 can satisfy the court about the need for an enquiry. The advantage of "physical appearance" of the accused may, however, be substantially lost, with passage of time, as longer the interval between the incident and the court's decision on the question of juvenility, the lesser the chances of the court making a correct Assessment of the age of the accused. In cases where the claim is made in this Court for the first time, the advantage is further reduced as there is considerable time lapse between the incident and the hearing of the matter by this Court.

The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence, showing his date of birth, by reference to any public document like the register of births maintained by Municipal Authorities, Panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the Court. Again there may be cases in which the accused may not be in a position to provide a birth certificate from the Corporation, the municipality or the Panchayat, for we know that registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful. Rule 12(3) of the Rules makes only three certificates relevant.

(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;

Non-production of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for Sub-rule 3(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the 'absence' of the certificates. Rule 12(3)(b) runs as under:

12(3) (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.

The expression 'absence' appearing in the above provision is not defined under the Act or the Rules. It is axiomatic that the use of the expression and the context in which the same has been used strongly suggests that 'absence' of the documents mentioned in Rule 12(3)(a)(i) to (iii) may be either because the same do not exist or the same cannot be produced by the person relying upon them. Mere non-production may not, therefore, disentitle the accused of the benefit of the Act nor can it tantamount to deliberate non-production, giving rise to an adverse inference unless the Court is in the peculiar facts and circumstances of a case of the opinion that the non-production is deliberate or intended to either mislead the Court or suppress the truth.

It is in this class of cases that the court may have to exercise its powers and discretion with a certain amount of insight into the realities of life. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school.

What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the Court may or may not direct an enquiry.

2011(8)SCALE423, (2011)13SCC751

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1531 of 2011 (Arising out of S.L.P. (Crl.) No. 3361 of 2011)

Decided On: 05.08.2011

Shah Nawaz Vs. State of U.P. and Anr.

Hon'ble Judges/Coram: P. Sathasivam and B.S. Chauhan, JJ.

Rule 12 of the Rules which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report.

The entry relating to date of birth entered in the mark sheet is one of the valid proof 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 mark sheet 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 the School. Accordingly, the Appellant was a juvenile on the date of occurrence.

The documents furnished clearly show that the date of birth of the Appellant had been noted as 18.06.1989. 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 mark sheet 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.

In the light of the above discussion, we hold that from the acceptable records, the date of birth of the Appellant is 18.06.1989, the Additional Sessions Judge and the High Court committed an error in taking contrary view. Accordingly, the Appellant is declared to be a juvenile on the date of commission of offence and may be proceeded in accordance with law.

2011(1)SCALE143, (2011)2SCC224

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 30 of 2011 (Arising out of SLP (Criminal) No. 808 of 2010)

Decided On: 07.01.2011

Daya Nand Vs. State of Haryana

Hon'ble Judges/Coram: Aftab Alam and R.M. Lodha, JJ.

Appellant was convicted under Section 376 Indian Penal Code, 1860 and his plea of being Juvenile was rejected by Courts below. On the date of occurrence the age of the Appellant was 16 years 5 months and 19 days.

Applying the ratio of the Constitution Bench decision in *Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551*, the Appellant would not be entitled to the protections and benefits of the provisions of the 2000 Act, since he was over 18 years of age on April 1, 2001, when the 2000 Act came into force.

The effect of the 2006 amendments in the 2000 Act were considered by this Court in *Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211*. And the Constitution Bench decision in *Pratap Singh's* case was held to be no longer relevant since it was rendered under the unamended Act. The law as now crystallised on a conjoint reading of Sections 2(k), 2(1), 7A, 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.

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. Later on, the decision in Hari Ram (supra) was followed by this Court *in Dharambir v. State (NCT of Delhi) and Anr. (2010) 5 SCC 344* and also in *Mohan Mali and Anr. v. State of M.P. AIR 2010 SC 1790*.

In view of the Juvenile Justice Act as it stands after the amendments introduced into it and following the decision in Hari Ram and the later decisions the Appellant cannot be kept in prison to undergo the sentence imposed by the Additional Sessions Judge and affirmed by the High Court. The sentence imposed against the Appellant is set aside and he is directed to be released

from prison. He is further directed to be produced before the Juvenile Justice Board, Narnaul, for passing appropriate orders in accordance with the provisions of the Juvenile Justice Act.

2011(8)SCALE439, (2011)13SCC744

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 16 of 2010 [Under Article 32 of the Constitution of India]

Decided On: 08.08.2011

Amit Singh Vs. State of Maharashtra and Anr.

Hon'ble Judges/Coram: P. Sathasivam and B.S. Chauhan, JJ.

The Petitioner has filed this writ petition under Article 32 of the Constitution of India praying for issuance of an appropriate writ in the nature of habeas corpus directing the Respondents to release him from Central Jail, Agra forthwith as the detention is contrary to the fundamental rights guaranteed under Article 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act').

Held,

In the case of **Pratap Singh** v. **State of Jharkhand and Anr.** (2005) 3 SCC 551, the Court held that the benefit of juvenility cannot be extended to the person who has completed the 18 years of age as on 01.04.2001 i.e. the date of enforcement of the Act. In the background of this judgment, the Legislature brought Amendment Act 33/2006 proviso and explanation in Section 20 which 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 (l) of Section 2, even if juvenile ceased to be a juvenile on or before 01.04.2001, when the Act 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. 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 Board concerned for passing sentence in accordance with the provisions of the Act.

After the judgment of the Constitution Bench in **Pratap Singh** (supra), this Court in the case of **Hari Ram** v. **State of Rajasthan and Ors.** (2009) 13 SCC 211considered the above question of law in the light of Amendment Act 33 of 2006 in the provisions of the Act which substituted Section 2(l) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence".

Section 7A makes it clear that the claim of juvenility is to be raised before any court at any stage, even after final disposal of the case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. Apart from the aforesaid provisions of the Act as amended, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, (in short 'the Rules') Rule 98, in particular, has to be read along with Section 20 of the Act as amended by the Amendment Act, 2006 which provides that even after disposal of cases of juveniles in conflict with law, the State Government or the Board could, either suo motu or on an application made for the purpose, review the case of juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years. All the above relevant provisions including the amended provisions of the Act and the Rules have been elaborately considered by this Court in **Hari Ram** (supra).

In the present case, the entry relating to the date of birth of the Petitioner in the Birth Certificate, entry relating to his date of birth in the Transfer Certificate, date of birth recorded in the mark sheet issued by the Council for the Indian School Certificate Examinations, date of birth has been recorded as 10.05.1982 and duly certified and authenticated by the authorities concerned. In a recent decision of this Court dated 05.08.2011 in Criminal Appeal No. 1531 of 2011 arising out of SLP (Criminal) No. 3361 of 2011, **Shah Nawaz** v. **State of U.P.** while considering similar documents, namely, certificate issued by the School Authorities and basing reliance on Rule 12 of the Rules held that all those documents are relevant and admissible in evidence. Inasmuch as the date of birth of the Petitioner is 10.05.1982 and on the date of the alleged incident which took

place on 01.05.1999, his age was 16 years, 11 months and 21 days i.e. below 18 years, hence on the date of the incident, the Petitioner was a juvenile in terms of the Act because he had not completed 18 years of age and is entitled to get the benefit of provisions under Sections 2(l), 7A, 20 and 64 of the Act. It is also specifically asserted that the Petitioner had already undergone 12 years in jail since then which is more than the maximum period for which a juvenile may be confined to a special home. Under these circumstances, the Petitioner is directed to be released from the custody forthwith.

AIR2010SC3380, 2010(8)SCALE109, (2010)8SCC508

IN THE SUPREME COURT OF INDIA

Special Leave Petition (Crl.) No. 8628 of 2009

Decided On: 11.08.2010

Vikas Chaudhary Vs. State of NCT of Delhi and Anr.

Hon'ble Judges/Coram: Altamas Kabir and Mukundakam Sharma, JJ.

Conviction under Section 364A of Indian Penal Code, 1860 – Appeal against the order of the High Court wherein it was held that making of ransom calls, even after the murder of victim, clearly constituted an offence under Section 364A of I.P.C

Whether the High Court was right in holding that the making of ransom calls, even after the death of the victim was a continuing offence so as to attract the provisions of Section 364A I.P.C.

There is little doubt that the main object of the offence committed by the accused was to extort money from the parents of the deceased victim by way of ransom, even after the death of the victim, as will be evident from the subsequent phone calls made right upto 11th March, 2003, asking for, ransom. The offence under Section 364A did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed. It is no doubt true that if the initial date of abduction, namely, 18thJanuary, 2003, is taken to be

the date on which the offence under Section 364A had been committed, as an isolated event, the Petitioner would have been a minor within the meaning of the Juvenile Justice Act, 2000. However, if 11th March, 2003, being the date on which the last ransom call was made, is taken as the date on which the aforesaid offence was committed, then the Petitioner would have ceased to be a minor and the above-mentioned Act would not apply to him.

It cannot be said that the offence under Section 364A I.P.C. stood abrogated upon the death of the victim. On the other hand, the continuation of ransom calls being made, even after the death of the victim, converts the offence into a continuing offence within the meaning of Section 472 Cr.P.C.

If Section 364A I.P.C. and Section 472 Cr.P.C. are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made, i.e., 11thMarch, 2003, which has to be taken to be the date of commission of the offence and, accordingly, the Juvenile Justice Act was no longer applicable to the Petitioner, who had attained the age of 18 years by then.

AIR2010SC1790, 2010(4)SCALE493, (2010)6SCC669

IN THE SUPREME COURT OF INDIA

Crl. M.P. No. 6426 of 2010 in Criminal Appeal No. 1305 of 2009

Decided On: 28.04.2010

Mohan Mali and Anr. Vs. State of M.P.

Hon'ble Judges/Coram: Altamas Kabir and Cyriac Joseph, JJ.

Section 7A of Juvenile Justice Act 2000 allows a claim of juvenility to be raised before any court at any stage even after final disposal of case and speaks of procedure which the court is required to adopt when such claim of juvenility raised.

This Appeal, which arises out of Special Leave Petition (Crl.) No. 6276 of 2007, is directed against the judgment and order of the Indore Bench of the Madhya Pradesh High Court in Criminal Appeal No. 898 of 1997, challenging the judgment and order of conviction passed by the Addl. Sessions Judge, Dhar, in Sessions Trial No. 366 of 1994. By virtue of the said judgment, the Appellants, along with two other co-accused, were convicted under Sections 302/34, 326/34 and 324/34 of Indian Penal Code and sentenced to life imprisonment along with fine of Rs. 5,000/- for the offence under Section 302/34 IPC, three years' rigorous imprisonment along with fine of Rs. 500/- for the offence under Section 326/34 IPC and one year's rigorous imprisonment along with fine of Rs. 500/- for the offence under Section 324/34 IPC along with further sentence in default of payment of fine.

In the case of *Hari Ram v. State of Rajasthan and Anr.* (2009) 13 SCC 211. This Court while considering the various provisions of the 2000 Act, as amended in 2006, and, in particular, Section 7A which was introduced in the parent Act by the amending Act of 2006, held that Section 7A would have to be read in tandem with Section 20 of the 2000 Act and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 hereinafter referred to as `the 2007 Rules', which deal with disposed of cases of juveniles in conflict with law. Since all the three provisions are of relevance to this Appeal, the same are being separately dealt with hereinbelow.

Section 7A of the 2000 Act allows a claim of juvenility to be raised before any Court at any stage even after final disposal of the case and speaks of the procedure which the Court is required to adopt when such claim of juvenility is raised.

Section 20 of the 2000 Act specially provides for the procedure to be followed in pending cases and makes provision for continuance of trials which had been commenced prior to the coming into operation of the 2000 Act. While providing that the trial could continue before the Court, if it was found that the juvenile had committed an offence, the Court would be required to record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Juvenile Justice Board, which could then pass orders in respect of that juvenile in accordance with the provisions of the 2000 Act.

Section 64 of the 2000 Act deals with a situation where a juvenile in conflict with law is already undergoing sentence at the commencement of the Act and provides that the juvenile shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under Sub-section (2) of Section 16 of this Act.

In the facts of this case, we are faced with a situation where the juvenile, Dhanna Lal, had already been tried along with adults and had been convicted under Sections 302/34, 326/34 and 324/34 IPC and was sentenced to life imprisonment, out of which he has already undergone about 9 years of the sentence. Rule 98 of the 2007 Rules, in our view, squarely applies to Appellant No. 2 Dhanna Lal's case. His case is to be considered not only for grant of bail, but also for release in terms of the said Rule, since he has completed more than the maximum period of sentence as provided under Section 15 of the 2000 Act.

Having regard to the fact that the Appellant No. 2, Dhanna Lal, was a minor on the date of commission of the offence, and has already undergone more than the maximum sentence provided under Section 15 of the 2000 Act, by applying the provisions of Rule 98 of the 2007 Rules read with Sections 15 and 64 of the 2000 Act, the appeal is allowed as far as he is concerned and direct that he be released forthwith.

2010(2)SCALE856, (2010)3SCC757

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 487 of 2010 (Arising out of SLP (Crl.) No. 6629 of 2006)

Decided On: 12.03.2010

Jabar Singh Vs. Dinesh and Anr.

Hon'ble Judges/Coram: H.S. Bedi and A.K. Patnaik, JJ.

Whether High Court on revision justified in reversing finding of trial court that respondent No. 1 was not juvenile, holding him juvenile and directing his trial as such under Juvenile Justice Act?

Held,

The High Court was not at all right in reversing the findings of the trial court in exercise of its revisional jurisdiction. The entry of date of birth of Respondent No. 1 in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the Evidence Act inasmuch 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. As has been held by this Court in *Ravinder Singh Gorkhi v. State of U.P. (2006) 5 SCC 584* and *Jyoti Prakash Rai @ Jyoti Prakash* v. *State of Bihar* (2008) 15 SCC the age of Respondent No. 1 was a question of fact, which was to be decided on the evidence brought on record before the court and it was for the trial court to appreciate the evidence and determine the age of Respondent No. 1 at the time of commission of the alleged offence and in this case, the trial court has arrived at the finding that the claim of Respondent No. 1 that he was less than 18 years at the time of commission of the alleged offence, was not believable. While arriving at this finding of fact, the trial court had not only considered the evidence produced by Respondent No. 1 but also considered the fact that either in the earlier cases or during the investigation of the present case, the Respondent No. 1 had not raised this plea. While arriving at this finding of fact, the trial court had also considered the physical appearance of Respondent No. 1. Such determination on a question of fact made by the trial court on the basis of the evidence or material before it and other relevant factors could not be disturbed by the High Court in exercise of its revisional powers.

A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled "Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record

of any proceeding in which any competent authority or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court. The trial court, as we have discussed, has given good reasons for discarding the evidence adduced by the Respondent No. 1 in support of his claim that he was a juvenile at the time of commission of the alleged offence and there was no scope to hold that the order of the trial court was either illegal or improper and the High Court should not have substituted its own finding for that of the trial court on the age of Respondent No. 1 at the time of commission of the alleged offence by re-appreciating the evidence.

In the result, we allow this appeal and set aside the impugned order of the High Court and remit the matter to the trial court for trial of Respondent No. 1 in accordance with law treating him not to be a juvenile at the time of the commission of the alleged offence.

2010(12)SCALE212, (2010)14SCC571

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 2163 of 2010 (Arising out of S.L.P. (Crl.) No. 3884 of 2010)

Decided On: 12.11.2010

Bhim @ Uttam Ghosh Vs. State of West Bengal

Hon'ble Judges/Coram: D.K. Jain, and H.L. Dattu, JJ.

It is well settled that the date relevant for determining the age of the accused, who claims to be a juvenile/child would be the date on which the offence had been committed and not the date on which he is produced before the competent authority or in the court. *(Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551 and Ravinder Singh Gorkhi v. State of U.P. (2006) 5 SCC 584*)

It is manifest from a conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 of the 2000 Act, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted.

In the instant case, according to the report submitted on behalf of the State, the Appellant was about 15 years old at the time of the commission of the offence. the Appellant has to be held to be a juvenile, within the meaning of Section 2(l) of the amended 2000 Act, and is to be governed by the provisions of the said Act. The Appellant is now aged about 42 years. Keeping his age in view, it would not be conducive for the environment of the special home, particularly to the interest of other juveniles housed therein, to send the Appellant there or to keep him at some other place, as postulated in Section 16 of the 2000 Act for the remaining period in terms of Section 15 of the said Act.Accordingly, while sustaining the conviction of the Appellant, the sentence awarded to him is quashed.

2010(4)SCALE316, (2010)5SCC344

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 860 of 2010 (Arising out of S.L.P. (Crl.) No. 102 of 2010)

Decided On: 23.04.2010

Dharambir Vs. State (NCT of Delhi) and Anr.

Hon'ble Judges/Coram: D.K. Jain and J.M. Panchal, JJ.

The question for determination is whether or not the appellant, who was admittedly not a juvenile within the meaning of the Juvenile Justice Act, 1986 (for short "the 1986 Act") when the offences were committed but had not completed 18 years of age on that date, will be governed by

the Act of 2000 and be declared as a juvenile in relation to the offences alleged to have been committed by him?

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.

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.

Proviso to Sub-section (1) of Section 7A contemplates that a claim of juvenility can be raised before any court and has to be recognised at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the rules framed there under, even if the juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of Section 2(k) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted.

In the present case, as per the report of the Registrar submitted in terms of Section 7A of the Act of 2000, the age of appellant as on the date of commission of offences, i.e., 25th August, 1991, was 16 years, 9 months and 8 days. In the light of the afore-stated legal position, the appellant has to be held to be a juvenile as on the date of the Commission of the offences for which he has been convicted and is to be governed by the provisions of the Act of 2000.

The appellant has undergone an actual period of sentence of 2 years, 4 months and 4 days and is now aged about thirty five years. Keeping in view the age of the appellant, it may not be conducive to the environment in the special home and to the interest of other juveniles housed in the special home, to refer him to the Board for passing orders for sending the appellant to special home or for keeping him at some other place of safety for the remaining period of less than eight months, the maximum period for which he can now be kept in either of the two places.

Accordingly, while sustaining the conviction of the appellant for the afore-stated offences, the sentences awarded is quashed.

2009(6)SCALE695, (2009)13SCC211

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 907 of 2009 (Arising out of S.L.P. (Crl.) No. 3336 of 2006)

Decided On: 05.05.2009

Hari Ram Vs. State of Rajasthan and Anr.

Hon'ble Judges/Coram: Altamas Kabir and Cyriac Joseph, JJ.

Whether a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him?

In the instant case, the appellant was arrested on 30.11.1998 when the 1986 Act was in force and under Clause (h) of Section 2 a juvenile was described to mean a child who had not attained the

age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect. However, as indicated hereinbefore after the decision in *Pratap Singh vs. State of Jharkhand & Another [(2005) 3 SCC 551* Section 2(l) was amended to define a juvenile in conflict with law to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence; Section 7A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000. Section 7A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as has been done in this case, 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. 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.

The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the Proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of Clause (l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age. In view of Sections 2(k), 2(l) and 7A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile.

The appeal has, therefore, to be allowed on the ground that notwithstanding the definition of "juvenile" under the Juvenile Justice Act, 1986, the appellant is covered by the definition of "juvenile" in Section 2(k) and the definition of "juvenile in conflict with law" in Section 2(l) of the Juvenile Justice Act, 2000, as amended.

We, therefore, allow the appeal and set aside the order passed by the High Court and in keeping with the provisions of Sections 2(k), 2(l), 7A and 20 of the Juvenile Justice Act, 2000 and Rules 12 and 98 of the Juvenile Justice Rules, 2007, hold that since the appellant was below 18 years of age at the time of commission of the offence, the provisions of the said Act would apply in his case in full force.

IV

ENQUIRY PROCEDURE UNDER JJ ACT

AIR2013SC553, 2012(9)SCALE90, (2012)9SCC750

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1403 of 2012 (Special Leave Petition (Crl.) No. 7271 of 2011)

Decided On: 13.09.2012

Ashwani Kumar Saxena Vs. State of M.P.

Hon'ble Judges/Coram: K.S. Panicker Radhakrishnan and Madan B. Lokur, JJ.

Scope of Inquiry under the Juvenile Justice Act and Rules

Held,

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. 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.

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 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.

In many cases 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.

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. 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 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.

A duty is cast on all Courts/J.J. Board and the Committees functioning under the Act 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.

"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.

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.

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.

In several cases the 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. The courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

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.

The Appellate court 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. 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, it is unclear 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. The 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.

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.

The Supreme Court opined that the 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.

2012(4)SCALE348, (2012)5SCC201

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 651 of 2012 (Arising out of S.L.P. (Crl.) No. 2411/2011)

Decided On: 13.04.2012

Om Prakash Vs. State of Rajasthan and Anr.

Hon'ble Judges/Coram:

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

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 and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

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. 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.

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 v. State of Assam* reported in (2001) 5 SCC 714 dealing 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."

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.

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.The situation, however, would be different if the academic records are alleged to have been withheld 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.

The protection under the Juvenile Justice Act which is a benevolent legislation 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.

MANU/PH/2808/2013

IN THE HIGH COURT OF PUNJAB AND HARYANA

Cr. Rev. No. 303 of 2013 (O&M)

Decided On: 29.01.2013

Shimil Kumar Vs. State of Haryana

Hon'ble Judges/Coram: Mahesh Grover, J.

Section 14 is of utmost importance as this relates to an enquiry by the Board regarding a juvenile which precedes the examination of Section 12 in the context of a benefit of bail to be granted. Upon a finding recorded by the Board regarding a person in conflict with law being a juvenile, a right would be conferred in his favour to be released on bail ordinarily unless such a right is circumscribed by inhibitive factors of bringing 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. Therefore, the factors that go to determine a person being a juvenile necessarily have to precede the questions begging answers in terms of Section 12.

The vexed questions before this Court are

(i.) Whether the enquiry to ascertain the juvenility of an accused should be centered only on biological aspect as determinative of age?

(ii.) What sort of enquiry is the Board required to make and what are the factors to be considered to determine the age of a juvenile?

(iii.) What forms the basis of an apprehension of a Court that release of such a juvenile in conflict with law would endanger his own well being by bringing him into contact with criminals or men of bad influence or even on the count of defeating the cause of justice?

There is no distinction made by the Act between a juvenile in serious conflict with law and a destitute child who needs care and protection. Rights of both under the statute would be circumscribed by the limit of 18 years as per section 2(k). But does this mean that in a case where the Court is dealing with a child or a juvenile in conflict with law, the benefit of the protection of the Act would be afforded to him without even ascertaining these factors mentioned in section 2(d)(iii), (iv), (v), (vi), (viii) and the Board would proceed to determine this question solely on the basis of a person attaining the age of 18 years giving primacy only to the biological aspects. To the mind of this Court, over emphasis on the question of age in the cases of those above seventeen years of age but less than eighteen years as significant and determinative would be a fallacy fraught with dangers of absurdity causing acute damage and injustice to the victim in particular and society at large.

When we proceed to determine whether a person is a juvenile, it would depend upon both, his physical growth which exemplifies adolescence coupled with his behaviour, with emphasis on the latter, because it is his conduct or rather grave misconduct that has brought him in conflict with law and society.

Declaration of the age of the child who is in conflict with law by mere reliance upon a School Leaving Certificate or even a positive proof of the certificate of registration of birth ipso facto should not be the foundational basis to declare a person juvenile more particularly, when such a juvenile is accused of having committed a heinous offence particularly when days or few months separated him from adulthood.

One necessarily has to understand that in a country like ours and especially in a strata which is ignorant of even the basic requirement of getting a birth registered, there would be no conclusive proof of age and the age given in the school certificate or the records of the school would only

speak of an age imaginatively conjured by the parents at the time of admission of such a child. Even though it may form a persuasive piece of material, but certainly no credence and outright acceptability should be afforded to it. Factors such as ossification tests etc. may also be considered but they themselves are in determinative and not reliable and can form only collateral material in an enquiry.

But in the cases of aggravated offences, what is of importance to establish whether a person is a child or not, is his ability to comprehend what is right and what is wrong, what is lawful and what is unlawful and whether he understands the consequences of his actions. It is the advancement of his mental faculty that would suggest whether he is an adult or a juvenile and for this purpose, there has to be a specialized examination of the child at the hands of experts who can evaluate the ability of such a child to segregate good and bad, the lawful and unlawful and the consequences ensuing therefrom and this would show his maturity or immaturity to answer for his deeds.

It is the factors related to growth and maturity psychologically and socially, but not entirely biologically, which would give an insight as to whether a person is a child or an adult and merely because the age of 18 years would confer a lot of social and political privileges in a civil society, would not certainly mean that a person before attainment of such an age continues to remain a child and eluding adulthood, while he in his conduct otherwise demonstrates the capability of correct comprehension.

It is, therefore, the competence of a juvenile which has to be established before the Board and the Board and the courts ought not to automatically assume that the statutory definition would confer the halo of a juvenile and give him an undeserving protection and benefits.

Apart from determining such abilities, an enquiry should also establish the social factors surrounding such a person in conflict with law, as they also possibly may reveal the cause of a distorted or a perverted mind set, which may eventually lead to an appreciation of the ability of correct comprehension.

After the Juvenile Justice Board and the court concerned have addressed the afore-expressed concern which can be achieved by involving a professional psychologist/psychiatrist and

sociologists, the Board can then proceed to determine the second aspect as to whether to release a juvenile on bail which would now be dependent upon the first question because if a person is found capable of comprehending what is right and wrong, and is enabled to understand sufficiently his actions, then as an automatic corollary it should follow that release of such a person on bail would defeat the ends of justice and the remaining aspects of the likelihood of a child coming into contact with any known criminal or exposing him to moral, physical or psychological danger, would be questions dependent solely on factors and inferences which such facts may throw up.

The milder offences and deviant behaviour requiring the minimum correctional approach is adequately addressed by the provisions of Section 15 and it is only those cases where diabolic and monstrous acts are committed by a child in conflict with law that hackles of concerns are raised. Apprehensions as to whether a release of a juvenile would be detrimental to him and bring him in association with moral or physical danger, would depend upon the facts of each case. But in cases where a juvenile has been accused of aggravated offences which shock the conscience of the society, it would be safer to protect him from collective wrath of a community or a society, on account of retribution such a dastardly act may possibly invite. Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile. All these aspects are extremely significant for they would reflect and play upon the mind of the Court, when it considers the question of sentence to be visited upon a juvenile in conflict with law.

V

APPROPRIATE ORDERS UNDER THE JJ ACT

MANU/PH/3532/2010

IN THE HIGH COURT OF PUNJAB AND HARYANA

Crl. Misc. No. M-22999 of 2010

Decided On: 04.10.2010

Chander Mohan @ Bunti Vs State of Haryana and Ors.

Hon'ble Judges/Coram: Nirmaljit Kaur, J.

Applicability of Section 482 CrPC to proceedings involving a juvenile – Quashing on the basis of compromise between parties

This is a petition under Section 482 Code of Criminal Procedure for quashing of FIR No. 63 dated 10.02.2008 under Sections 376/328 IPC and 3/33 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of compromise arrived at between the parties.

There is no doubt that the powers under Section 482 Code of Criminal Procedure, quashing the FIR on the basis of compromise involving such serious offence as in the present case, should be exercised with restraint. At the same time, the compromise in an FIR involving such offences should not be thrown out or ignored without examining the facts.

In the present case, the Petitioner accused is a minor. As per Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile Board is required to complete the enquiry within four months from the date of its commencement, in the present case, the matter is pending for the last more than two years as the FIR is dated 10.02.2008. Secondly, as per Section 15 of the said Act, the maximum sentence that can be awarded is by sending the juvenile to special home for a period of three years besides of course even releasing the juvenile on probation of good conduct. Moreover, some of the objects to be obtained by the said Act are detailed in para 13 of the judgment rendered by Hon'ble the Apex Court in the case of *Hari Ram v. State of Rajasthan 2009(2) RCR 878*, which has specifically held that a juvenile is to be treated differently.

Once the matter has been compromised between the parties, no useful purpose will be served by proceeding with the prosecution. Quashing herein is at the instance of victim herself. She wants to forget her past. For continuing the trial, she will have to make various visits to the Court. It is an offence which is degrading for the victim as well. Her father and brother are standing by her side supporting her and equally concerned that she must be allowed to move on with her life. Both the Petitioner and victim were minor. They both need protection and require to be treated differently and helped to forget the trauma than be forced to go through it. The only way to forget it is by closing the chapter once for all. Thus, there is no hesitation in accepting the compromise in the peculiar facts of the present case.

MANU/PH/2570/2012

IN THE HIGH COURT OF PUNJAB AND HARYANA

Crl. W.P. No. 1971 of 2011 (O&M)

Decided On: 27.09.2012

Gurdarshan Singh Vs. State of Punjab and Another

Hon'ble Judges/Coram: Paramjit Singh Patwalia, J.

Conviction under Sections 376, 366, 354 read with Section 34 of Indian Penal Code, 1860 - The instant criminal writ petition has been filed by the petitioner under Article 226 of the Constitution of India praying for issuance of an appropriate writ in the nature of habeas corpus directing the respondents to release him from jail forthwith as the detention is contrary to the fundamental rights guaranteed under Article 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act).

1. **Whether the trial against the petitioner was against the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended upto date and as such, the conviction and sentence awarded to the petitioner is unjust, unconstitutional and erroneous?**

Being a juvenile, the trial of the petitioner should have been under the Juvenile Justice (Care and Protection of Children) Act, 2000, but he was tried under the law as applicable to adult accused. The expression law in force' in Article 20 refers to the law factually in operation and applicable to a particular case at the time when offence was committed and expression penalty greater than that which might have been inflicted in the Article 20 means a person may be subjected to only those penalties which are prescribed by the law which is in force at the time when he commits offence for which he is being punished. In the Article 21 words 'except according to procedure established by law' are very significant. The word law' has been used in the sense of law enacted by the legislature. Hence expression 'procedure established by law' in this Article means the procedure prescribed by enacted law of the State. In this case petitioner has been convicted without following the enacted law i.e. "the Act" as applicable to juveniles. Hence, the criminal proceedings against the petitioner were contrary to Articles 20 and 21 of the Constitution as well as against the provisions of "the Act".

Non-pleading juvenility issue resulted in erroneous conviction of the petitioner for the offence under Sections 366 and 376 IPC and sentence to undergo RI for 5 years by the Trial Court, which was modified by this Court in appeal vide its impugned order dated 11.01.2008 to RI for 3 years. In this situation, the matter would have been referred before the "Board" for de novo trial. The petitioner was entitled to get the benefit of juvenility under the Old as well as the Act. When the Act (i.e. 2000 Act) came into force w.e.f. 01.04.2001, the petitioner had already completed the age of 18 years. On that date, he was 23 years 10 months and 19 days of age. It is relevant to point out that the applicability of the Act was clarified by Amending Act 33/2006 which provided that the benefit of juvenility shall be extended even to juveniles who had completed the age of 18 years on 01.04.2001 and the amended Act shall have retrospective effect.

The petitioner is liable to be and is held to be a juvenile as on the date of commission of offence for which he has been convicted and is to be governed by the provisions of the Act of 2000 as amended in 2006. So, the trial of the petitioner was against the provisions of the Act and was unjust, unconstitutional and erroneous which has caused prejudice to the rights of the petitioner.

2. **Whether the conviction and sentence of a juvenile can be set aside in habeas corpus writ jurisdiction, more so when it has become final in the ordinary criminal justice system,**

and can it be treated as post-conviction remedy, if so to what extent relief can be granted?

The petitioner has prayed for post-conviction relief by way of constitutional remedy of habeas corpus. Habeas Corpus is a constitutional privilege to provide prompt and efficacious remedy for whatever society and individuals deem to be intolerable restraints. Post-conviction remedy is considered as redheaded step child of the legal system. Habeas Corpus is a safeguard against unjust, unconstitutional and erroneous confinements including sentence. In the present case equity is strongly in favour of the petitioner as his conviction and sentence is the result of extreme error in following the procedure established by law. In the earlier question, I have held that the petitioner was juvenile, he could only have been tried by "the Board" as per provisions of "the Act", but he was tried under the ordinary criminal justice procedure and convicted and sentenced.

To my mind, post-conviction relief is a vital part of criminal justice system specifically when constitutional violation has occurred at the trial for want of effective assistance of the counsel for the petitioner, failing to raise plea of juvenility, failure on part of the prosecutor and the investigating agency to point out the age of the petitioner and as such it also escaped the notice of trial Court and the appellate Court that he was of about 12 years only at the relevant point of time. The Courts administering criminal justice cannot turn blind eye to the ground realities, if, Criminal Court is to be an effective instrument in dispensing justice then Presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in trial.

By way of present writ petition, petitioner is seeking indulgence for correction of long festering injustice. Section 7-A of the Act is an important safeguard against unjust, unconstitutional and erroneous conviction and sentence. The petitioner has been able to show that sentence awarded to him does not conform to the fundamental requirement of law i.e. compliance of provisions of Juvenile Justice and as such, the petitioner is entitled to immediate release. In these circumstances, the question arises whether statutory provisions are in existence for addressing the constitutional and statutory violations during trial which prejudice the rights of the accused. In the Code of Criminal Procedure, there is no provision under which orders could be recalled or reviewed. In this situation, habeas corpus proceedings could be an adequate and appropriate

remedy after the exhaustion of ordinary criminal process. In the present case there are glaring errors of law, and violation of the constitutional provisions i.e. trial not being in accordance with the procedure established by law and there is error in proceedings of trial i.e. non following the provisions of "the Act". It is correct that post conviction relief is not a substitute for statutory appeal or special leave to appeal etc. Since, there is no provision of review in the Code of Criminal Procedure after order is passed in appeal, revision, etc. the error if committed during the trial certainly prejudices the rights of the petitioner. As such, there is need of provision so that such error can be corrected as the trial of the petitioner was without jurisdiction and sentence imposed was not authorized by law. The conviction of the petitioner under the ordinary criminal law has potentially affected the duration of sentence as under "the Act" maximum sentence can be awarded is three years only.

Habeas corpus is not an ordinary criminal proceeding process, rather, it amounts to a collateral attack challenging the validity of conviction or sentence under ordinary procedure of law. None of the counsel was able to explain how the Court should proceed when ordinary criminal process has become final and the conviction is erroneous, what is the remedy available under law. There is no constitutional right to appeal, only statutes create the right to appeal. The habeas corpus review can be used to testing the unlawfulness of the imprisonment as an indirect challenge to the sentence. In the case of Amit Singh (supra) identical situation arose. In that case, petitioner was tried according to the procedure as is applicable to the adult criminals. In that case, trial Court convicted him, appeal was dismissed by the High Court and SLP was dismissed, thereafter, petitioner in that case approached the Hon'ble Supreme Court under Article 32 of the Constitution of India, the Hon'ble Supreme Court granted him the appropriate relief treating him as juvenile. Identical situation has arisen

In the present case, there is an error affecting the substantial right, manifest injustice and miscarriage of justice as the trial of the petitioner was not in accordance with "the Act". Prejudicial atmosphere covering the whole trial and subsequent appellate jurisdiction has resulted into miscarriage of justice and manifest injustice to the petitioner. The procedural irregularity and error in trial of the petitioner go to the heart of the case, so, in the interest of justice, the only post-conviction efficacious remedy can be by way of habeas corpus petition and in the opinion of this Court, if there are violation of the fundamental rights like Article 21 as is

the present case then the habeas corpus petition is maintainable to rectify the error of law even after the exhaustion of the ordinary criminal justice process.

The petitioner has undergone an actual period of sentence of about 1 year and 8 months and is now aged more than thirty five years. I feel that, keeping in view the present age of the petitioner, the interest of other juveniles housed in the special home it may not be conducive to send him to special home or to refer him to the Board for passing orders for sending the petitioner to special home or for keeping him at some other place of safety for the remaining period of about 1 years and 4 months, the maximum period for which he can now be kept in either of the two places.

MANU/MP/0431/2015

IN THE HIGH COURT OF MADHYA PRADESH (JABALPUR BENCH)

Criminal Revision No. 1986/2013

Decided On: 30.01.2015

In Reference Vs. Golu

Hon'ble Judges/Coram: M.K. Mudgal, J.

Maximum period for which juvenile in conflict with law can be committed to a reformatory home

Reference has been made by the Registry for consideration of whether the Principal Judge of Juvenile Justice Board under the Juvenile Justice (Care and Protection of Children) Act, 2000 had power to commit a juvenile in conflict with law to a Reformatory Home for a period of more than three years no matter whatever the nature of crime.

It is manifestly clear from sub-section (3) of Section 15 of the J.J. Act that no juvenile in conflict with law can be committed to a Reformatory for a period exceeding that of three years. As per Section 16 (i) of the J.J. Act, it is obvious that a delinquent in conflict with law is exempt from all forms of punishment for all crime committed by an adult. Being sent to a Reformatory is a

matter entirely different from being sentenced to a punishment under IPC, which is served in a jail whereas the period of reform is considered as necessary to win away a juvenile in conflict with law from incipient criminal inclination. The period of reform such a juvenile is to be subjected to cannot be more than three years even according to proviso of sub-section (2) of Section 16 of the J.J. Act.

That the period of custody in Reformatory has not to exceed the period of three years has been made emphatically clear in Para 19 of the judgment of the Hon'ble Apex Court in the case of *Amit Singh Vs. State of Maharashtra and others, (2011) 13 SCC 744*. Similarly, another judgment passed by Delhi High Court in the case of *Jagdish Gupta Vs. State of Delhi* judgment, dated 30-8-2013, it transpires that the period of custody in a Reformatory has not to exceed the period of three years.

In view of the above discussion, one cannot but arrive at the conclusion that no juvenile in conflict with law cannot only be subjected to any form of sentence but also cannot be committed to a Reformatory for his own good for a period of more than three years. The question referred to stands answered as above. So far as the case under reference is concerned, there is no need to issue any direction as the period of custody for six years, which is contrary to Sections 15 and 16 of the J.J. Act and for which the delinquent was committed to the custody of Reformatory is already over.

2013(9)SCALE18

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 763 of 2003

Decided On: 10.07.2013

Jitendra Singh @ Babboo Singh and Anr. Vs. State of U.P.

Hon'ble Judges/Coram: T.S. Thakur and Madan B. Lokur, JJ.

Whether the conviction of the Appellant can be sustained on merits and, if so, the sentence to be awarded to the Appellant can be upheld

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. 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

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

- In the first category of cases, the conviction of the juvenile was upheld but the sentence quashed. (*Jayendra v. State of Uttar Pradesh* (1981) 4 SCC 149, *Bhoop Ram v. State of U.P.* (1989) 3 SCC 1, *Pradeep Kumar v. State of U.P.* 1995 Supp (4) SCC 419, *Bhola Bhagat and other v. State of Bihar* (1997) 8 SCC 720, *Upendra Kumar v. State of Bihar* (2005) 3 SCC 592, *Gurpreet Singh v. State of Punjab* (2005) 12 SCC 615 and *Vijay Singh v. State of Delhi* (2012) 8 SCC 763)
- In the second category of cases the conviction of the Appellant was upheld but the sentence awarded was modified to the period of detention already undergone.(*Satish @ Dhanna v. State of Madhya Pradesh* (2009) 14 SCC 187 and *Dharambir v. State (NCT of Delhi)* (2010) 5 SCC 344
- In the third category of cases the entire case was remitted to the Juvenile Justice Board for disposal in accordance with law *(Hari Ram v. State of Rajasthan (2009) 13 SCC and Daya Nand v. State of Haryana (2011) 2 SCC 224)*
- The fourth category of cases includes *Ashwani Kumar Saxena v. State of Madhya Pradesh (2012) 9 SCC 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.

In the opinion of the Supreme Court, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. 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.

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.

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. While dealing with the case of the Appellant under the Indian Penal Code, 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.

Following the view taken in *Ankush Shivaji Gaikwad v. State of Maharashtra (2013 (6) SCALE 778)* 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.

Whether any appropriate measures can be taken to prevent the recurrence of a situation 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.

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".

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.

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. 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.

The remedy

In ***D.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 Code of Criminal Procedure 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.

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.

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 Criminal Procedure 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.

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 Criminal Procedure Code)

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.

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.

T.S. Thakur, J.

The settled legal position, therefore, is that in all 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.

A careful reading of Section 7A(2) of the Act 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.

In the totality of the 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.

2012(7)SCALE404, (2012)8SCC34

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1467 of 2007

Decided On: 17.08.2012

Kalu @ Amit Vs. State of Haryana

[Alongwith Criminal Appeal No. 868 of 2008]

Hon'ble Judges/Coram: Aftab Alam and Ranjana Prakash Desai, JJ.

Appropriate Order in circumstances where juvenile has undergone imprisonment for offence

Accused Kalu @ Amit was a juvenile when the offence was committed. Once it is held that accused Kalu @ Amit was a juvenile, when the offence was committed, the law must take its course and he must be given the benefit of the Juvenile Act.

Kalu @ Amit was a juvenile on that date of commission of offence i.e. 7/4/1999. 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 @ 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 @ Amit was a juvenile at the time of commission of offence had come to light 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 and the Board would have passed any appropriate order permissible under Section 15 of the Juvenile Act (See *Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211*).

The Board could have sent Kalu @ Amit to a Special Home for a maximum period of three years and under Section 19, it would have made an order directing that the relevant record of conviction be removed. Since on the date of offence, Kalu @ Amit was about 17 years, 5 months and 23 days of age, he could have been directed to be kept in protective custody for 3 years

under proviso to Section 16 as the offence is serious and he was above 16 years of age when the offence was committed. But he certainly could not have been sent to jail.

Since, the plea of juvenility was not raised before the High Court, the High Court confirmed the sentence which it could not have done. None of the above courses can be adopted by us, at this stage, because Kalu @ Amit has already undergone more than 9 years of imprisonment. In the peculiar facts and circumstances of the case, therefore, we quash the order of the High Court to the extent it sentences accused Kalu @ Amit to suffer life imprisonment for offence under Section 302 read with Section 34 of the Indian Penal Code. After receipt of report from Additional Sessions Judge, we had ordered that the Kalu @ Amit be released on bail. If he has availed of the bail order, his bail bond shall stand discharged. If he has not availed of the bail order, the prison authorities are directed to release him forthwith, unless he is required in some other case. Accused Kalu @ Amit shall not incur any disqualification because of this order.

2011(1)SCALE504, (2011)1SCC(Cri)676

IN THE SUPREME COURT OF INDIA

Crl. A. No. 573 of 2005 and 138 of 2011 (Arising out of SLP (Crl.) No. 4724 of 2004)

Decided On: 14.01.2011

Lakhan Lal Vs. State of Bihar

[Alongwith Crl. Misc. Pet. No. 1049 of 2011]

Hon'ble Judges/Coram: B. Sudershan Reddy and S.S. Nijjar, JJ.

Appropriate Order in circumstances where juvenile has crossed age of majority

Whether or not the Appellants who were admittedly not 'juvenile' within the meaning of the Juvenile Justice Act, 1986 (for short "the 1986 Act") when the offences were committed but had not completed 18 years of age on that date are entitled for the benefit and protection under the provisions of the 2000 Act? Whether they are entitled to be declared as 'juvenile' in relation to the offences committed by them?

The issue with regard to the date, relevant for determining the applicability of either of the two Acts is no longer res integra. A Constitution Bench of this Court in ***Pratap Singh v. State of Jharkhand and Anr.*** (2005) 3 SCC 551 in its authoritative pronouncement held that the relevant date for determining the age of a person who claims to be a juvenile/child would be the date on which the offence has been committed and not the date when he is produced before the authority or in the Court.

The Act that was in operation as on the date of the incident was Bihar Children's Act, 1986. The said Act which defines a 'juvenile' as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

In the present case, when the inquiry has been initiated against the Appellants herein, they were admittedly 'juvenile' even under the provisions of 1986 Act but this issue has been ignored by the trial Court and as well as the appellate Court. There is no dispute whatsoever that both the Appellants have crossed the age of 18 years, yet both the Appellants, for the purposes of hearing of this appeal continued as if they were to be 'juvenile'.

The fact remains that the issue as to whether the Appellants were juvenile did not come up for consideration for whatever reason, before the Courts below. The question is whether the same could be considered by this Court at this stage of the proceedings. A somewhat similar situation had arisen in ***Umesh Singh and Anr. v. State of Bihar*** (2000) 6 SCC 89 wherein this Court relying upon the earlier decisions in ***Bhola Bhagat v. State of Bihar*** (1997) 8 SCC 720, ***Gopinath Ghosh v. State of W.B*** 1984 Supp SCC 228 and ***Bhoop Ram v. State of U.P.*** (1989) 3 SCC 1 while sustaining the conviction of the Appellant therein under all the charges, held that the sentences awarded to them need to be set aside. It was also a case where the Appellant therein was aged below 18 years and was a child for the purposes of the Bihar Children Act, 1970 on the date of the occurrence.

Both the Appellants have crossed the age of 40 years as at present and therefore it will not be conducive to the environment in the special home and at any rate, they have undergone an actual period of sentence of more than three years the maximum period provided under Section 15 of the 2000 Act. In the circumstances, while sustaining the conviction of the Appellants for the

offences punishable under Section 302 read with Section 34 of the IPC, the sentences awarded to them are set aside. They are accordingly directed to be released forthwith. This view of ours to set aside the sentence is supported by the decision of this Court in *Dharambir v. State (NCT of Delhi) and Anr. (2010) 5 SCC 551*.

MANU/DE/1877/2011

IN THE HIGH COURT OF DELHI

CRL. A. 883/2005

Decided On: 31.03.2011

Subhash Vs. State

[Alongwith CRL. A. 165/2005]

Hon'ble Judges/Coram: S. Ravindra Bhat and G.P. Mittal, JJ.

Appropriate Order in circumstances where juvenile has undergone imprisonment

In this case, the facts would reveal that the accused juvenile suffered incarceration for over 8 years, i.e. nearly three times the maximum period prescribed under the Act, for sending a juvenile found to have committed an offence, to a special home, (which is 3 years). The report relied on by this Court - which has not been challenged by the State - indicates that he was about 15-16 years as on the date of occurrence. These facts reveal an extremely disturbing picture, pointing to whole sale violation of the procedure established by law, and illegal detention of Ramesh for 5 years. This failure was systemic, because neither the police, nor the prosecution, nor the counsel, or even the Court - all of whom had sufficient opportunity to observe the accused even thought it appropriate to consider, let alone explore the possibility of applying for determination of the age. There was a clear violation of his rights under Article 21 of the Constitution of India.

As per Section 7A Sub-section (2) of the Act of 2000 if a Court finds a person to be a juvenile on the date of commission of the offence, the juvenile has to be forwarded to the Board for passing an appropriate orders and sentence and the sentence, if any, passed by a Court shall be deemed to have no effect. Unfortunately, the Appellant has already spent over eight years in jail far in excess of the maximum period of three years that too could have been spent by him in a special home as per Section 15(1)(g) of the Act of 2000. It would be a great injustice to direct the Appellant to face an inquiry again before the Board.

There can be no doubt that when confronted with a fact situation, as the circumstances have unfolded, uniformly court decisions have quashed proceedings, and deemed it appropriate not to remit the matter to the Board, as it would subserve no public interest. In this case too, such an order is the only possible direction in the ends of justice. Yet, the accused would labour under two strong disabilities of not having been exonerated on due determination and having suffered an unlawful detention, for over 8 years. In this case, as a restitutionary measure, the Court is of the opinion that the accused Ramesh should be entitled to some compensation. Having regard to all these circumstances, this Court directs the Govt. of NCT of Delhi to pay 5,00,000/- to the Appellant as compensation within eight weeks. All proceedings against the Appellant Ramesh are hereby quashed; in the circumstances, there shall be no further proceeding against him; he is also entitled to 5,00,000/- in terms of directions of this Court.

MANU/DE/1335/2007

IN THE HIGH COURT OF DELHI

Crl.Rev.P. No. 871/2006

Decided On: 19.04.2007

Sunil Ojha Vs. The State of NCT of Delhi

Hon'ble Judges/Coram: Badar Durrez Ahmed, J.

Whether a juvenile can be denied the benefit of set-off of his period of detention pending an inquiry under the said Act in respect of the ultimate order that is passed upon conclusion of the inquiry under Section 15 of the said Act?

It is true that Section 428 of the Code refers to "sentence of imprisonment" and it is also true that the order passed in the present case directing the petitioner to be kept in a Place of Safety for two years is, strictly speaking, not a "sentence to imprisonment". Therefore, strictly speaking, Section 428 of the Code would not applicable. However, the principles analogous to those involved in Section 428 of the Code could, in my view, be applied to the present case.

As noted in the case of *State of Maharashtra v. Najakat Ali Mubarak Ali 2001CriLJ2588* , the ideology enshrined in Section 428 of the Code can be discerned by having a look at the Objects and Reasons for bringing about the provision. The Objects and Reasons are as under:

> *The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as undertrial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as undertrial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as undertrial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are undertrial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting-off of the period of detention as an undertrial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil.*

Reading the above Statement of Objects and Reasons, it becomes clear that the salutary provision of Section 428 was introduced by the Legislature into the statute book to alleviate the

problems faced by persons who underwent long periods as undertrial prisoners. Similarly, where a juvenile in conflict with law is kept under detention pending an inquiry under the said Act, he should also be granted the same benefit while passing an order under Section 15 thereof. Though there is no statutory provision such as Section 428 of the Code which would be specifically and clearly applicable to the case of juveniles, in my view, principles analogous to the same can be invoked by the Juvenile Justice Board while passing an order under Section 15. An examination of the provisions contained in Section 15(1) of the Act would be necessary:

The Board has ample power, if it is satisfied that having regard to the nature of the offence and the "circumstances of the case", it is expedient to reduce the period of stay in, inter alia, a Place of Safety. In my opinion, the principles analogous to those of Section 428 of the Code can be read into the expression "circumstances of the case" to enable the Board to reduce the period of stay that it may direct upon the completion of inquiry.

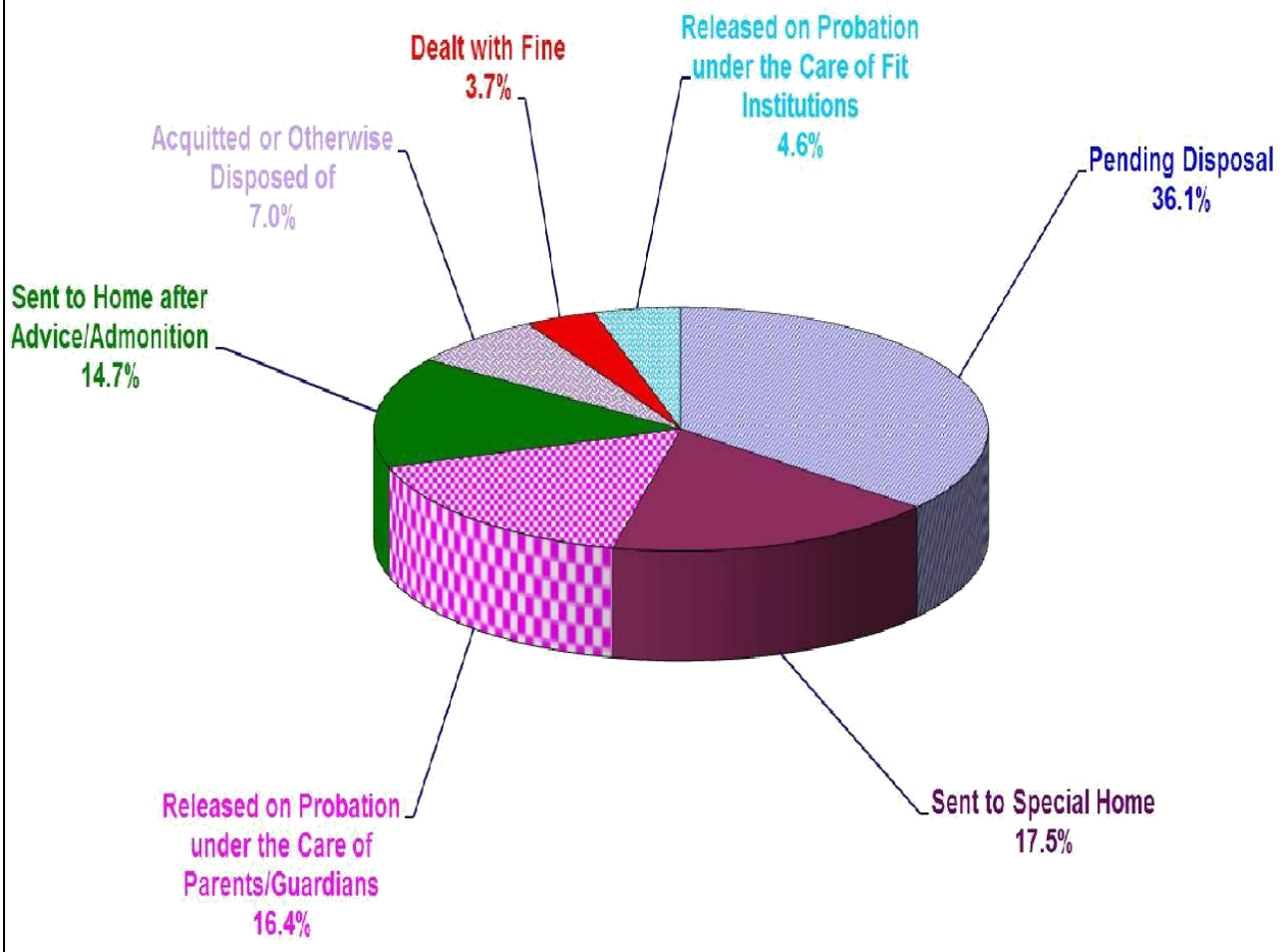
The scheme of the Act requires the Board to act as expeditiously as possible, particularly because it deals with juveniles. A look at Section 14(1) and its proviso would make this abundantly clear. The said proviso requires that the inquiry shall be completed within a period of four months from the date of its commencement unless the period is extended by the Board having regard to the circumstances of the case and special cases, after recording the reasons in writing for such extension. This gives an indication that under normal circumstances, a juvenile, who does not have the benefit of having been released on bail under Section 12(1), but is sent to a Special Home or a Place of Safety under Section 12(3) during the pendency of inquiry regarding him, shall not have to remain in such a limbo for more than four months. The maximum period of sending a person to a Special Home, now prescribed under the amended Section 15(1)(g) is three years. Reference may also be made to the provisions of Section 65 of the Act which also indicate that the sentence shall not exceed the maximum period provided under Section 15 of the Act even in respect of those juveniles who were undergoing sentence at the time of introduction of the said Act.

In the present case, what has happened is that the inquiry has dragged on for over five years, when it ought to have been completed within four months. The petitioner has been under detention throughout the period of inquiry of about five years and to make the matters worse,

when the Juvenile Justice Board directed the petitioner to be sent to a Place of Safety, he was, instead, sent to Central Jail No. 5, Tihar, New Delhi where he spent one year and seven months, as indicated above. There are, Therefore, more reasons than one that the petitioner ought to be released forthwith.

Final Order of Juveniles Apprehended during 2014

Figure 10.3



Source: Crime in India-2014, National Crime Records Bureau, Ministry of Home Affairs

VI

EFFECTIVENESS OF INSTITUTIONS UNDER JJ ACT

2011(11)SCALE512

IN THE SUPREME COURT OF INDIA

Writ Petition (Civil) No. 473 of 2005

Decided On: 12.10.2011

Sampurna Behura Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram: R.V. Raveendran and A.K. Patnaik, JJ.

Petition under Article 32 of the Constitution of India for the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000

Held,

The Home Departments and the Director Generals of Police of the States/Union Territories will ensure that at least one police officer in every police station with aptitude is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the juvenile or child in coordination with the police as provided under Sub-section (2) of Section 63 of the Act. The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authority will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of police officers, who are designated as the Juvenile or Child Welfare Officers. The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory.

The Home Departments and the Director Generals of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit comprising of all police officers designated as Juvenile or Child Welfare Officer be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in Sub-section (3) of Section 63 of the Act.

MANU/DE/2139/2012

IN THE HIGH COURT OF DELHI

WP (C) 8889/2011

Decided On: 11.05.2012

Court On Its Own Motion Vs. Dept. of Women and Child Development & Ors.

Hon'ble Judges/Coram: Hon'ble Acting Chief Justice A.K. Sikri and Hon'ble Mr. Justice Rajiv Sahai Endlaw

Whether, juveniles in prison clearly amounts to violation of their fundamental rights and contrary to provisions of JJ Act.

Held,

It is of utmost importance to take note of the fact that a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. It is because of this immaturity that they are not supposed to be treated as adult offenders.

The main reason for this inference is the fact that a young person is believed to be less blameworthy than adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

Along with the aforesaid, what needs to be kept in mind is the main object and purpose of the JJ Act. The focus of this legislation is on the juvenile's reformation and rehabilitation so that he also may have an opportunity to enjoy as other children.

There can be no denial of the fact that lodging juveniles along with hardened adult criminals can have drastic implications on the physical and mental well being of a juvenile offender. Trying

minor in adult courts and sentencing them in adult prison is totally against the object and purpose of the JJ Act. Even for hardened career criminals, jail can be a dangerous place, but for youth it can be especially dangerous as they are often vulnerable to prison victimization because of their size and age.

It cannot be overlooked that youth offenders often have psychological or social issues that need to be addressed as part of the rehabilitative process. Adult facilities/prison often lack the staff to address the needs of young incarcerated persons. In effect, what will happen is that if the youth is sent to an adult prison, then it is more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive. Juveniles confined within an adult prison may not have social services they need but with constant access to criminal minds, there are more chances of them becoming a recidivist.

Taking stock of the aforementioned observations, it can be said without any doubt that the basis of the separate justice system for juveniles is that the adolescents are different from adults, less responsible for their transgressions and more amenable to rehabilitation.

Lodging of juveniles in the prison clearly amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) apart from adverse psychological impact on these children. Obviously such a position is because of the reason that at the time of arrest of such persons, there is no proper age verification and had that been so, juveniles would not have been subjected to hardship of Adult Criminal Justice System. Therefore, keeping in view the aforesaid, this Court felt imminent directions were required to obviate the recurrence of such cases and also for proper verification of those lodged in Jail who appeared to be minors.

We accordingly direct:-

(i) The investigating officers, while making arrest shall reflect the age of the prisoner arrested in the Arrest Memo. It would be the duty of the Police Officer to ascertain the said age by making inquiry from the prisoner arrested if such prisoner is in possession of any age proof etc. In other cases if prisoner, from appearance, appears

to be juvenile and the police officer has belief that the prisoner is a juvenile, he shall be produced before the JJB instead of criminal court.

(ii) The police authorities shall introduce "Age Memo" on the line of "Arrest Memo" which was evolved by the Supreme Court in the case o*f D.K. Basu v. State of West Bengal 1996 (9) SCALE 298*. A concrete and well thought scheme in this behalf needs to be evolved by Special Juvenile Police Unit to address the concern. We direct Special Juvenile Police Unit to evolve such a scheme and place before us on the next date of hearing.

(iii)As and when a young person is apprehended/arrested and he is produced before the Magistrate, it will be the duty of the Magistrate also to order ascertainment of age of such a person. The Magistrate shall, in all such cases, undertake this exercise wherefrom the young person from his/her looks appears to be below 18 years of age and also in all those cases where in the arrest memo age is stated to be 18-21 years. A preliminary enquiry in this behalf shall be undertaken of all these young persons whose age is stated to be up to 21 years on the lines of judgment of the Supreme Court in *Gopinath v. State of West Bengal AIR 1984 SC 237.*

Directions regarding Conduct of Inquiry

In conducting the inquiry the -

- I.O. shall ask the person if he has been a part of formal schooling at any point of time and if the child answers in affirmative the I.O. should verify the record of such school at the earliest.
- If the parents of the person are available, this inquiry should be made from them. The I.O. should ask the parents if they have got the date of birth of the child registered with the MCD or gram pradhan etc. as provided under law and taken the answers/documents on record.
- Where no such document is found immediately and the I.O. has reasonable grounds to believe that such document might be existing he shall produce such person before Board and should seek time for obtaining these documents.

- A preliminary inquiry can be made from the parents of such person about the time of their marriage and the details of how many children do the parents have and after how long of the marriage were these children born.
- In addition to above an inquiry of previous criminal involvement of the juvenile shall necessarily be made with the effort to find if there is any past declaration of juvenility. For this the police should also maintain data of declaration of juvenility. The inquiry conducted in each case shall be recorded in writing and shall form a part on investigation report in each case where a child claims his age up to 21 years irrespective of whether he is found a juvenile or an adult.
- Special Juvenile Police Unit shall set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.
- An advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs/JWOs for the purpose of assistance on matters related to age inquiry. Such advisory/Circular/Standing Order shall also include the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.
- In each case, where a public officer arrests a person as adult and later on such person turns out to be a juvenile, DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

In addition to the directions given by this Court on earlier occasions, which have already been extracted above, following guidelines and directions are issued which are to be kept in mind for taking suitable measures in this behalf:

A. For Commissioner of Police

(i) Commissioner of Police shall issue a Standing Order clarifying the roles and responsibilities of police officers, Investigation Officers, Inquiry by DCPs in case of lapse, Juvenile or Child Welfare Officers, SHOs and DCPs in view of the provisions of JJ Act and Rules made there under, Judgment of Hon'ble Delhi High Court in W.P. (C) 8889 of 2011 dated 21.03.2012 and any subsequent order/ Judgment as may be passed and to revise and modify such Standing Order in case of any change in law.

(ii) Commissioner of Police on receipt of half yearly report suggested in Para C-3 from Nodal Head of SJPU shall pass necessary directions to give effect to the recommendations and to address the concerns as may be raised in such reports. An Action Taken report of the same shall also be forwarded to the Juvenile Justice Committee of Hon'ble Delhi High Court.

B. For Deputy Commissioners of Police, In-charge of Districts concerned:

(i) In case any person approaches the DCP with a complaint that Police is not taking notice of juvenility of any offender and is refusing to take on record the documents being provided to suggest juvenility and instead treating a child as adult, it shall be the duty of DCP concerned to do an immediate inquiry into such complaint. Such inquiry shall be completed within 24 hours of having received such complaint and if the complaint turns out to have merit and truth, DCP concerned shall make orders to the concerned police officers to immediately take corrective steps and shall also initiate disciplinary action against erring police official.

(ii) In cases where any action is taken against an erring police officer, a quarterly report of the same containing the nature and reasons of such lapse and details of action taken shall be furnished by the DCP concerned to the concerned JJB having jurisdiction over that district along with a copy to the Nodal Head of Special Juvenile Police Unit for their record and intimation.

(iii) DCPs shall, during the regular monthly meeting with all the SHOs & Inspector-Investigations, shall brief them about their responsibilities, any new judgment or order from JJBs and Courts, any practice direction etc. and shall ensure that their subordinate police officers don't show children as adults, take all necessary steps to verify the age of accused persons and are in overall compliance with the provisions of JJ Act & Rules.

(iv) DCPs shall also ensure that all the police stations under their jurisdiction put in place the required setup and required notice boards etc, as has been specified in the Standing Order No. ops. 12, Act & the Rules or any other circulars in this regard.

(v) On being intimated by the JJBs about any lapse having been committed on age investigation, DCP concerned shall institute an inquiry and take such action as may

be required or appropriate. An action taken report shall be submitted to the JJB by the DCP concerned within a month from the receipt of such intimation.

C. For Nodal Head/ In-Charge of Special Juvenile Police Unit.

(i) Nodal Head of Special Juvenile Police Unit shall cause quarterly (once in three months) inspection of all the police stations through an official not below the rank of ACP in order to check that all the police stations have put in place the required setup and all the obligations required.

(ii) A report shall be prepared by such ACPs of such visits documenting the best practices or shortcoming noticed at the police stations and shall be submitted to the Nodal Head of SJPU within 10 days of such visit.

(iii) Nodal Head of SJPU shall make a report on half yearly basis and shall submit it to the Commissioner of Police with recommendations. A copy shall also be submitted to Juvenile Justice Committee of Hon'ble Delhi High Court.

(iv) District Level units of SJPU shall on a regular basis monitor the functioning of police stations of that district vis-`-vis implementation of JJ Act and Rules and direction of this Hon'ble Court and shall provide necessary guidance and trainings to the police.

D. For the Officer In Charge of the Police Station:

i. It shall be the duty of the Officer Incharge of the Police Station to ensure that police officers of his or her police station have taken all measures to ensure that proper inquiry or investigation on the point of age has been carried out and that all the required formalities, procedure have been carried out and required documents have been prepared in this regard.

ii. Officer In Charge shall also ensure that a notice board, prominently visible, in Hindi, Urdu and English language informing that persons below the age of 18 years are governed under the provisions of JJ act and cannot be kept in police lock up and jails and are not to be taken to the Adult Criminal Courts. Such notice Board shall also contain the names and contact details of Juvenile Welfare Officers, Probation Officers and Legal Aid Lawyers of DSLSA.

E. For the Investigating Officer or any other police officer acting under the instruction of Investigation Officer:

i. Every Police officer at the time of arresting/apprehending young offenders shall be under obligation to inform the alleged offender about his right to be dealt with under the provisions of Juvenile Justice Act if he is below 18 years of age and a proper counselling shall be done on the point of age.

ii. IO or any other police officer affecting the arrest/ apprehension shall also prepare the Age Memo. A copy of such Age Memo shall also be delivered to the alleged offender and his parents/ guardians/ or relative who have been intimated about his arrest.

iii. At the time of forwarding the copy of FIR to the Ilaka Magistrate within 24 hours, IO shall be under duty to file the preliminary age memo along with the FIR in case arrest /apprehension is made before forwarding the FIR.

iv. On completion of age inquiry, which shall be done, preferably within one week of arrest/apprehension, the completed age memo be filed before the court concerned.

v. At the time of first production of an offender who is between 18 to 21 years of age as per the initial inquiry of the IO as above, before the Court, IO or the Police officer responsible for producing the offender before the Court, shall produce alleged offender, along with a copy of the FIR and age memo before the Secretary of respective District Legal Services Authority, irrespective of whether the alleged offender is being represented by a legal aid lawyer or not.

vi. If the alleged offender claims to be a juvenile and age documents to support such claim are not readily available and it is not possible for IO to obtain such documents within 24 hours of arrest, accused shall be produced before Juvenile Justice Board.

vii. At the time of first production of offender before Court or JJB, it shall be the duty of IO to ensure that parents or relatives of such offender are duly informed about (1) date, (2) time and (3) particulars of the court of such production and a copy of such intimation shall be produced before the Court at the time of first production.

F. For the Juvenile Welfare Officers (JWOs):

i. It shall be the duty of the Juvenile or Child Welfare Officer to obtain the copy of age declaration done by JJB or CWC and to forward such copy to the Special Juvenile Police Unit for entry into the record and to obtain a certificate that such entry has been done with SJPU and a copy of such certificate shall be deposited to the JJB or CWC concerned.

ii. It shall be the duty of the Juvenile Welfare Officer to ensure that any offender at the Police station who might be a juvenile is not treated as adult and if he notices any such incident, he shall immediately report to the Officer in Charge of the Police Station concerned with an intimation to District SJPU.

iii. In case, Any police officer is approached by any person alleging that some one who is a juvenile and has been treated as an adult by any officer of that Police Station, it shall be the duty of such police officer to record the statement of such complainant and then to register a DD Entry to this effect immediately and take up the issue with the Juvenile Welfare Officer or Investigation Officer concerned or the Officer In Charge concerned and cause corrective steps to be taken by such police officer. JWO shall furnish a copy of such DD Entry to the aggrieved person/ complainant. A report about such complaint, copy of DD entry, details of action taken or proposed to be taken shall be forwarded to the District SJPU with in 24 hours of receiving such complaint.

G. For Tihar & Rohini Jails:

(i) "Visitors" Boards" prescribed in Rule 12 and 13 of the Delhi Prison (Visitors of Prisons) Rules, 1988, shall specifically mention in their reports the status of young offender found in the jails and also recommend follow up action to be taken up by the Jail Authorities.

(ii) The Jail Authorities will not get the medical examination test done at the first instance on its own. Such cases will be immediately intimated to the DSLSA with complete details such as FIR No, Court name, next date of hearing and other required details to enable DSLSA to take appropriate follow up action.

(iii) Such persons who appear to be juveniles as per JJ Act, 2000 shall be segregated immediately from the other prisoners. If Jail authorities are of the view that any person

brought in the Jail may be a probable juvenile, it should send a letter addressed to the Court Concerned within 24 working hours, requesting for an age inquiry to be conducted. Copy of such letter shall also be attached with the Warrant of the prisoner. It should be the prerogative and responsibility of the Court concerned to initiate an age inquiry as per law and make a decision accordingly. Jail authorities cam maximum bring the fact of possible juvenility to the notice of Courts by way of a proper communication.

(iv) Every Jail shall display at a prominent place in all the wards, canteen and visitor's area in Hindi, English and Urdu languages notice boards informing inmates that persons who age was below 18 years at the time of commission of offense are not supposed to be in Jail and are entitled to kept in children Homes and be treated under the Provisions of Juvenile Justice Act and be dealt with by the Juvenile Justice Board which make efforts for reformation and rehabilitation. Such Notification shall also inform the procedure to be adopted and the persons to be contacted within jail in case if they want to claim juvenility. Jail Authorities as well as Legal Aid Authorities shall be under duty to provide effective and speedy legal aid to every inmate who wants to put a claim of juvenility in the Court.

(v) Jail authorities / Superintendent shall make available the details of each inmate, as maintained by them, to the panel visitors of NCPCR, which shall include but not be limited to name, address, age on record, previous history of institutionalization in jails, medical reports.

H. For Juvenile Justice Boards:

i. JJB shall conduct the proper age inquiry of each child brought before it as per the procedure laid down in Rule 12 of the Delhi Juvenile Justice (Care & Protection of Children) Rules 2009.

ii. On every occasion, when the case of a juvenile is transferred from the adult court to the JJB and the juvenile is transferred from jail to the concerned Observation Home, the JJB shall interact with the juvenile and record his/her version on how he came to be treated as an adult. If from the statement of the juvenile and after appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall intimate the concerned DCP. This intimation shall be done in all those cases which are

received from the JJB by way of transfer from the adult court, and shall be done even in all those cases in which the declaration of juvenility has been done by the Adult Court.

iii. JJBs shall determine the age of a person by way recording the evidence brought forth by the Juvenile and the prosecution/ complainant and the parties shall be given an opportunity to examine, cross examine or re-examine witnesses of their choice.

iv. In case of medical age examination, the parties shall be given copies of the medical age examination report immediately by the JJBs. The parties shall have the right to file objection thereto, including the right to cross-examine before final age determination is done.

v. While declaring the age, the order of age declaration shall also state the age as nearly as possible as on the date of commission of the offence.

vi. Before commencing the age inquiry, a notice thereof shall be served upon the complainant by the JJB or the Court Concerned, which shall also accord opportunity to the complainant of being heard on the issue including producing evidence; however the age inquiry will be concluded within the stipulated time limit of one month.

vii. It shall be the duty of Board to ensure that every juvenile in whose respect age inquiry is being conducted is being represented by a Counsel and in those cases, where there is no lawyer present before the Board at the time of hearing of case; Board shall provide a Legal Aid Lawyer.

viii. JJB shall give copy of age declaration to JWO to get it recorded with Nodal Officer of SJPU. A certified copy of the age declaration shall be mandatorily given to the juvenile or his/ parents on the same day along with a copy to the concerned Juvenile or Child Welfare Officer.

I. For National Commission for Protection of Child Rights (NCPCR):

i. NCPCR shall constitute a panel of at least ten (10) persons to make visits to various jails in Delhi in order to find out if there are any persons lodged in such jails who should have been the beneficiaries of the JJ Act. Members of such panel may visit various jails as per the schedule drawn in consultation with/ intimation to the Jail Authorities.

ii. Reports of such visits along with the list of probable juveniles shall be forwarded to the Member Secretary of Delhi State Legal Services Authority, Jail Authorities and the JJBs

concerned for further action. NCPCR shall devise a Performa which shall be used by such visitors and shall be supplied to all such visitors on the panel. Such filled up proformas will be used to compile a report.

iii. Such persons shall be only those persons who are in a position to and are willing to visit various Jails in Delhi at least once a month but it may conduct such visits more frequently if required.

iv. NCPCR shall make arrangements to pay for a reasonable honorarium and incidental expenses on travel etc. to the members of this panel whose services would be obtained by NCPCR from time to time.

v. NCPCR shall provide training and orientation to all the members of the panel on JJ Act, method of Age inquiry, jail rules & discipline, and method of filling up the proforma etc.

vi. Such panel may be revised as and when required by NCPCR.

J. For Legal Aid Lawyers & Delhi Legal Services Authority:

i. Legal Aid Lawyers from Delhi State Legal Services Authority who are authorised to be the jail visiting lawyers shall visit Jails on their schedule as may be prescribed and shall intimate the details of inmates who may be juveniles to the Secretaries of the respective District Legal Services Authorities for further appropriate action.

ii. Legal Aid Lawyers shall be entitled to make visit to the Mulahiza ward(New admission ward) of the adolescent and female jails and be allowed to freely interact with the inmates and shall not wait for inmates to approach them in the legal aid room.

iii. Superintendent of each jail shall intimate to the DSLSA on a fortnightly basis about the names, case details, court and date of next hearing of those inmates who may be juveniles.

iv. Whenever any offender of 18 to 21 years age is produced at the office of the Secretary of concerned District Legal Services Authority, the secretary him/her self and in his/her absence the Front Office Lawyer will interact with the alleged offender to ascertain the facts as are relevant for determination of age such as date of birth, name of first attended school, names, number and date of birth of siblings etc.) while explaining the purpose of seeking such information and shall move applications where necessary and irrespective

of the alleged offender being represented by private counsel to request the Court to conduct an age inquiry.

K. For the Courts concerned:

i. Whenever an alleged offender is produced before a court, not being the JJB or CWC, it shall on the very first date of production question the offender about his/her age and shall inform such offender about the benefits of the JJ Act. If the offender claims or appears to be 18-21 years, it shall direct the IO to produce the alleged offender at the Office of the Secretary of District Legal Services Authority. The Court shall by way of an inquiry under Rule 12 of the Delhi JJ Rules 2009 satisfy itself that the offender is not a juvenile.

ii. If the court concerned is of the view that the offender produced before it may be a juvenile, it shall order for immediate transfer to Observation Home and production of such offender before the JJB concerned, and shall direct the Alhmed to send the case file to JJB immediately.

iii. If a claim of juvenility under Section 7A of the JJ Act is raised before any court at any point of time, the Court shall conduct an age inquiry as per the Rule 12 of the Delhi JJ Rules 2009 and if a person is established to be a juvenile, shall order for same day transfer to Observation Home (if offender is below 18 years as on the date of such order) and to the Place of Safety (if person has turned adult on the date of such order) and shall direct the Alhmed to send the case file complete in all respect including documents relating to Bail etc. to the JJB Concerned.

iv. If there is an adult co-accused also, the copy of the judicial file shall be prepared by such Court and shall be forwarded to the JJB Concerned.

L. For the Government Hospitals and Medical Boards:

i. All Government Hospitals shall constitute Medical Boards to carry out medical age examinations and shall give report not later than 15 days of request being made in this regard.

ii. All the members of medical Board (Physiologist, Dental Examiner and Radiologist/ Forensic expert)shall give their individual reports based on their respective examinations

and the same shall be mentioned in the report, based on which the Chairperson shall give the final opinion on the age within a margin of one year.

M. Guidelines for Legal Services in Juvenile Justice Institutions:

i. When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer, juvenile and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.

ii. JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.

iii. Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.

iv. Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.

v. Juvenile Justice Board should make sure that not a single juvenile's case goes without having a legal aid counsel.

vi. Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.

vii. In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.

viii. Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.

ix. Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.

x. Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.

xi. If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.

xii. Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.

xiii. Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with State Legal Services Authority.

xiv. Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.

xv. Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.

xvi. Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.

xvii. Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.

xviii. Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.

xix. Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

In addition, we deem it imperative to issue the following direction for strict compliance by all concerned:

1) As per the Provision of Jail Manual, each jail shall have a welfare officer in addition to other officers. But in Delhi Jails, number of welfare officers is inadequate where certain posts are lying vacant. There are only 5 Welfare Officers for 11 Jails. Jails Administration may kindly be directed to appoint required number of WOS.

2) Accountability: Granting compensation to the victims in respect of wrong done has become a matter of norm. However, it is necessary to ensure that compensation should not become a tool for the State to brush wrongs, committed by their officers, under the carpet. It is necessary to hold them personally accountable, as more often than not, the incarceration of the child in adult prison is the fault of arresting officer, who fails to fulfill his duty in ensuring that the accused in not a juvenile.

3) Training and Sensitization of Magistrates/ Judicial Officers, Legal Aid Lawyers, Jail Visiting Lawyers and other lawyers etc.: these are the three agencies that come in contact with the Juveniles in conflict with law, thus the need to ensure that a child in conflict with law should be treated as a child and not an offender, is primarily on them. Therefore, it is necessary that all the Officers are trained in respect of the provisions of the Juvenile Justice Act, and this can be done with a collaborative effort of the Civil Society Organizations and the State Agencies. A specific direction may kindly be given for trainings to be organized by DSLSA, Bar Associations for training and sensitizing Legal Aid Lawyers, Jail Visiting Lawyers and all other lawyers as well.
