VIMAL CHADHA

v.

VIKAS CHOUDHARY AND ANOTHER

(Criminal Appeal No. 966 of 2008)

MAY 27, 2008

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000 – Determination of age of Juvenile in delinquency – For the offence of murder coupled with abduction – Ransom calls made even after killing of deceased – Held: Such offence is a continuous offence – Hence the matter is required to be determined in the light of s. 472 Cr.P.C. – Code of Criminal Procedure, 1973 – s. 472.

Respondent No. 1-accused was charged for the offence of abduction coupled with murder. Initially he did not claim himself to be a juvenile. After the prosecution adduced its evidence, accused filed an application for transfer of the case to Juvenile Board. In support of age, School Leaving Certificate was produced. Trial Court directed the Investigating Officer to submit a report. Trial court since was not satisfied with the Report, directed medical examination of the accused for determination of his age. In view of the medial report, the trial court opined that his age on the day of incident i.e. on 18.1.2003 was 19 years and 5 months and held him to a major on that date. The court denied to give weightage to the School Leaving Certificate. High Court in Revision, setting aside the order of trial court, remanded the matter back to trial court for fresh consideration. Trial Court again held him to be a major on the basis of medical report. High Court in Revision again set aside the order of the trial court. Hence the present appeal.

A Allowing the appeal, the Court

HELD: 1 Determination of age of a 'juvenile in delinquency' must be determined as and when an application is filed. It is no longer *res integra* that the relevant date for determination of the age of the accused would be the date B on which the occurrence took place. What would be the date on which offence has been committed in a given case has to be decided having regard to the fact situation obtaining therein. [Paras 11 and 12] [918-E,F,G]

C *Pratap Singh v. state of Jarkhand and Anr.* 2005 (3) SCC 551 – relied on.

2. Criminal Laws in India contemplate a continuing offence. If an offence has been a continuing offence, then the age of the juvenile in delinquency should be deter- D mined with reference to the date on which the offence is said to have been committed by the accused. It may be true that the prosecution proceeded on the basis that the entire offence had taken place on 18th January, 2003. From a perusal of the charge-sheet, it appears that the E appellant had been getting calls for payment of ransom despite the fact that the deceased had, in the meanwhile, been killed. It is one thing to say that a missing report has been filed on a particular date but it is another thing to say that in a case of this nature when the actual offence(s) F had taken place would remain uncertain. Giving calls for payment of ransom is an offence. In case of murder coupled with abduction in a given case may be considered to be a continuous offence. In view the facts of the case, the matter may be considered afresh in the light of G the provisions of Section 472 Cr.P.C. by the trial court. [Paras 12 and 17] [918-G, 918-B-E, 922-C,D]

Ravinder Singh Gorkhi v. State of U.P. 2006 (5) SCC 584; *Jitendra Ram alias Jitu v. Stateof Jharkhand,* 2006 (9) SCC 428; *Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar,* H JT 2008 (3) SC 397; *Balu @ Bakthvatchalu vs. State of*

Tamilnadu, JT **2008 (2) SC 321;** *Jameel v. State of Maharashtra* **2007 (2) SCALE 32 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 966 of 2008

From the final Judgment and Order dated 11.09.2007 of the High Court of Delhi at New Delhi in Criminal Revision Petition No. 156 of 2007.

Kiran Suri for the Appellant.

Subhash Kaushik, Rashmi Malhotra, D.S. Mahra, G.K. Kaushik, Anil Kumar Sharma, Vivek Sharma and K.S. Rana for the Respondents.

Sunil Dutta Mishra for the Impleading party.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. How to determine the age of a juvenile in delinquency within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act') is in question in this appeal which arises out of a judgment and order dated 11th September, 2001 passed by a learned Single Judge of the Delhi High Court in Criminal Revision No. 156 of 2007 whereby and whereunder an order dated 20th January, 2007 passed by a learned Additional Session Judge, Delhi, was set aside.

3. Appellant before us is the first informant, the father of a boy, Parkash Chadha @ Sunny who was kidnapped for ransom and later on murdered. He was aged about 20 years. He was found missing after he had gone out with his friends on 18th January, 2003. A missing report was lodged on the said date. On or about 19th January, 2003, Respondent No.1 was suspected of involvement in the said crime by the police. He, on the basis of the investigation carried out for the said purpose charge-sheeted for commission of offence under Sections 302/364/34 of the Indian Penal Court by the Court. Although the first

A information report was lodged on 19th January, 2003, the respondent No.1 was arrested on 4th May, 2003. A charge sheet was filed on 22nd July, 2003 wherein it was recorded that calls for payment of ransom were being made from time to time and last of such call for payment of ransom was received on 11th
B March, 2003. In regard to the finding out of the dead body of Parakh Chadha DD No. 40 under Section 302/201 of the Indian Penal Code was separately registered.

4. Upon his production, the respondent No.1 did not claim himself to be a juvenile. Charges were framed. The prosecu-
C tion started adduction of evidence on or about 3rd February, 2005. Only on 31st May, 2005 respondent No.1 herein filed an application for transfer of the case to the Juvenile Board on the plea that he was a 'juvenile' on the date of occurrence. A school leaving certificate was also produced. The Learned Additional
D Sessions Judge, trying the case, directed the Investigating Officer to submit a report. The report pursuant thereto reads as under :-

> "Inquiry conducted into the matter revelas that Vikas Choudhary was admitted to Class-I in Lawrence School
E of Ashok Vihar Phase-I, Delhi vide Admission NO.412. The date of birth showed in the register 20.01.1985. There is no birth certificate or other document available in support of date of birth. The date of admission is 17.04.1989".

F 5. The learned Sessions Judge was not satisfied therewith. The Investigating Officer was directed to get the respondent No.1 medically examined for getting his age determined. Pursuant thereto or in furtherance thereof, the respondent was examined medically. A report was submitted on 9th August, 2005.
G It reads as under :-

"HRH Medical Report

> Advise X-Ray as per dorsal spine, medial ends of clavicles, V-C Scapulae in bony feature upper ending element, lower ends of radius iliac crusts have fixed. Interior angle of
H

scapula, acromina processes, iliac crests, medial ends of clavicles are ischail lubordsiles show fusion of their epiphysis. Upper end lower surfaces of vertera show no fusion of their end plates. Radiological ages in between 22-25 yrs."

The learned Judge on the said report, opined :-

"The report of Dr. P.K. Jain, Senior Radiologist about the bone age X-Ray determination of accused Vikas Choudhary received today. As per the report, the age of accused/applicant Vikas Choudhary on the date of his examination was between 22-25 years. On calculation, the age of accused Vikas Choudhary on the date of incident, i.e. 18.01.2003 come to be 19 years and 5 months. So far as the matriculation certificate of accused/ applicant Vikas Choudhary is concerned, it is a common practice that parents mention the age of their children on the lesser side in the school in order to avail the benefit in the services later on. Hence, no weightage can be given to the matriculation certificate in the presence of medical evidence, which shows that the applicant/accused Vikas Choudhary was more than 19 years of age on the date of incidents.

Considering the totality of the circumstances, I prima facisely hold that the present applicant/accused Vikas Choudhary was major at the time of occurrence. The application for sending him to the Juvenile Court stands dismissed."

6. On a revision application filed thereagainst before the High Court, it by an order dated 31st August, 2006 set aside the said order and directed :-

"Anyhow, these are the matters which require a more detailed examination particularly in view of the fact that there exists a School Certificate wherein the date of birth of the petitioner has been given. The veracity of the School

A Certificate and Transfer Certificate submitted by the petitioner is not doubted. In these circumstances, the impugned order is set aside and the learned Additional Sessions Judge is directed to consider the matter afresh and if it appears to the learned Additional Sessions Judge B that the petitioner is a Juvenile on the basis of the material on records, he is required to be sent to the Juvenile Justice Board for further proceedings."

C 7. Again by reason of an order dated 20th January, 2007 the learned Judge held :-

"As per School Leaving Certificate, the date of birth of the accused is 20.01.1985. The only question before the Court is whether the School Leaving Certificate of the D accused has to be relied upon or Bone Age X-Ray record is to be relied upon. School Leaving Certificate of the accused was verified during the proceedings and report was filed by IO wherein it has been mentioned that no birth certificate or other certificate is available in support of the E date of the accused in the School record."

Relying on the decision of this Court in *Pratap Singh v. State of Jharkhand and another,* [(2005) 3 SCC 551] it was held :-

F "From the judgments cited by the learned APP, it is clear that to ascertain the age of accused persons only School Leaving Certificate cannot be relied upon alone and the court has to see all the other facts and circumstances along with the other material placed on record. If assuming G that the age of the accused was 22 years on the date of his examination as per Bone Age X-ray Examination report, after giving margin of two years from the age reported upto 25 years, even then n the date of alleged offence, he was more than 18 years of age. According to the conviction slip dated 04.05.2003, of the accused, which H

was filled on the basis of the information given by the accused, the age of the accused has been mentioned as 19 years and even after calculation, he was more than 18 years of age on the date of alleged offence." A

8. Respondent moved the High Court again in revision. B

By reason of the impugned judgment dated 11th September, 2007, the High Court held :-

"As far as the ossification test and the medical evidence is concerned there too the approach of the learned Additional Sessions Judge is in my opinion, erroneous. C According to the expert the petitioner was 22-25 years on the date of his examination i.e. 9.8.2005. The Learned Additional Sessions Judge acknowledged that such determination is a rough estimate and the individual would have to be given benefit by deducing some years but D proceeded to do so from the outer age indicated. This is an incorrect approach as the juvenile is entitled to beneficial interpretation in such case. Therefore, the two years deduction made would have be (sic) from the lower age indicated namely, 22 years. That would mean that as E in August, 2005 the Petitioner was probably 20 years; as on the date of incident, (20.01.2003) in all probability he was less than 18 years. This interpretation is also in consonance with the claims based on the Board Certificate relied upon by the Petitioner.: F

9. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant would submit :-

1) That the High Court committed a serious error in passing the impugned judgment in so far as it failed G to take into consideration that from the conduct of the respondent No.1 it is evident that he did not claim to be a juvenile at the first instance and only when the trial started, he filed a purported school leaving certificate, which is suspect. H

A 2) The approach of the High Court in analysing the medical report is not correct as the starting point should not have been taken to be 22 but should have been taken at 25.

B 3) In any event, having regard to the provisions contained in Section 472 of the Code of Criminal Procedure the offence must be held to have been a continuous one and as ransom calls were being made till 11th May, 2003, the said date should be considered to be the cut off date for the purpose of C determination of the age.

10. Mr. G.K. Kaushik, learned counsel appearing on behalf of respondent No.1 on the other hand would submit:

1. That at all stages 18th January, 2003 has been taken D to be the date of occurrence, and even the charges have been framed on the premise that the occurrence had taken place on the said date.

2 The conclusion of the High Court that the appellant is, on 17th January, 2003, would be 17 years 5 months E corroborates with the medical report that if on the date of examination his examination, respondent No.1 is taken to be 22 years of age.

11. Determination of age of a 'juvenile in delinquency' must F be determined as and when an application is filed. In view of the decision of the Constitution Bench in *Pratap Singh* (supra) it is no longer res integra that that the relevant date for determination is the age of the accused would be the date on which the occurrence took place.

G 12. What would be the date on which offence has been committed in a given case has to be decided having regard to the fact situation obtaining therein.

Indisputably our Criminal Laws contemplate a continuing H offence. Section 472 of the Code of Criminal Procedure reads

as under :-

"472. Continuing offence.

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

If an offence has been a continuing offence, then the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the accused. It may be true that the prosecution proceeded on the basis that the entire offence had taken place on 18th January, 2003. We have, however, been taken through the charge-sheet, from a perusal whereof it appears that the appellant had been getting calls for payment of ransom despite the fact that the deceased had, in the meanwhile, been killed.

It is one thing to say that a missing report has been filed on a particular date but it is another thing to say that in a case of this nature when the actual offence(s) had taken place would remain uncertain.

Giving calls for payment of ransom is an offence. In case of murder coupled with abduction in a given case may be considered to be a continuous offence.

13. This Court in a catena of decisions have laid down the criteria for determining the age. We would notice some of them.

In *Ravinder Singh Gorkhi v. State of U.P.,* [(2006) 5 SCC 584] this Court opined :-

"38. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor

A he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same
B standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a
C judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

39. We are, therefore, of the opinion that until the age of
D a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. *It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and*
E *circumstances of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim.*

[Emphasis supplied]

F

14. This aspect of the matter has also been considered in Jitendra Ram alias Jitu *v. Stateof Jharkhand,* [(2006) 9 SCC 428] wherein it was held :-

"20. We are, however, not oblivious of the decision of this
G Court in *Bhola Bhagat* v. *State of Bihar* wherein an obligation has been cast on the court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. *We are, however, of the opinion that the*
H *same would not mean that a person who is not entitled*

to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records."

(emphasis supplied)

15. This Court in *Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar,* [JT 2008 (3) SC 397] held :-

"It is in the aforementioned situation, we are of the opinion that the test which may be applied herein would be to take the average of the age as opined by both the medical boards. Even applying that test, the age of the appellant as on 01.04.2001 would be above 18 years.

We, however, hasten to add that we have taken recourse to the said method only for the purpose of this case and we do not intend to lay down any general proposition of law in this behalf As indicated hereinbefore, in so doing, we have also taken into consideration the fact that the appellant had filed documents in support of his claim that he was a juvenile but the same were found to be forged and fabricated which is itself a factor to show that he was making attempts to obtain a benefit to which he might not have been entitled to."

[See also *Balu @ Bakthvatchalu vs. State of Tamilnadu,* [JT 2008 (2) SC 321].

16. The question came up for consideration recently again in *Jameel v. State of Maharashtra,* [2007 (2) SCALE 32] wherein it has been held :-

"9. It was furthermore submitted that although the age of the appellant on the date of the occurrence was more than sixteen years but below eighteen years, having regard to the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000, (for short, 'the 2000') it was imperative on the part of the court to follow the procedures

A laid down therein.

13. So far as the submission of the learned counsel in regard to the applicability of the 2000 Act, is concerned, it is not in dispute that the appellant on the date of occurrence had completed sixteen years of age. The B offence having been committed on 16.12.1989, the 2000 Act has no application. In terms of Juvenile Justice Act, 1986, 'juvenile' was defined to mean "a body who had not attained the age of sixteen years or a girl who had attained the age of eighteen years:.

C

17. We have, however, been informed that the effect of Model Rules having come into force and, if so, the applicability thereof may have to be considered in a given case but keeping in view the facts of the case, we are of the opinion that the mat- D ter may be considered afresh in the light of the provisions of Section 472 of the Code of Criminal Procedure by the learned trial court.

The judgment of the trial court is set aside accordingly. The appeal is allowed.

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Applications for impleadment, modification/clarification of order dated 2.11.2007 and bail have become infructuous and are dismissed as such.

K.K.T. Appeal allowed.