BHIM @ UTTAM GHOSH

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 2163 of 2010)

NOVEMBER 12, 2010

[D.K. JAIN AND H.L. DATTU, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000:

ss.2(k), 2(1), 7A, 20, 49 – Held: Persons 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 they were undergoing sentences upon being convicted – In the instant case, appellant was convicted u/s.307, IPC – His age at the time of commission of offence was about 15 years, therefore, he is held to be a juvenile, within the meaning of s.2(l) of the amended 2000 Act – Juvenile Justice (Care and Protection of Children) Rules 2007 – rr.12 and 98 – Penal Code, 1860 – s.307.

Claim of juvenility – Relevant date for determining age of the person claiming to be juvenile – Held: Would be the date on which the offence was committed and not the date on which he was produced before the competent authority or in the court.

s.20, Explanation – Determination of juvenility – Held: In all pending cases, which include not only trials but even subsequent proceedings by way of revision or appeal, etc., the juvenility has to be determined in terms of clause (l) of s.2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act came into force, and the

A *provisions of the said 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 – Juvenile Justice Act, 1986.*

B *s.7A(1), proviso – Claim of juvenility – Held: 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 2000 Act and the rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the* C *commencement of the Act – 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 2000 Act as if the provisions of s.2(k) of the Act, which defines "juvenile" or "child" to mean a person* D *who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act – Juvenile Justice Act, 1986 – Juvenile Justice (Care and Protection of Children) Rules 2007 – rr.12 and 98.*

E *s.2(l) – "juvenile in conflict with law" – Meaning of – Held: Means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.*

F *s.20 – Special provision in respect of pending cases – Held: If the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward him to the Juvenile Justice Board for passing orders in accordance with the provisions of the 2000 Act.*

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ss.15, 16 – Order – Conviction u/s.307 IPC – Appellant, juvenile at the time of commission of offence, has attained 42 years of age – Held: In view of his age, it would not be conducive for the environment of Special Home particularly H *to the interest of other juveniles housed therein, to send the*

appellant there or to keep him at some other place, as postulated in s.16 for the remaining period – Therefore, while sustaining his conviction, the appellant is directed to be released forthwith – Penal Code, 1860 – s.307.

Pratap Singh v. State of Jharkhand & Anr. **(2005) 3 SCC 551;** *Ravinder Singh Gorkhi v. State of U.P.* **(2006) 5 SCC 584 – relied on.**

Case Law Reference:

(2005) 3 SCC 551	**relied on**	**Para 8**
(2006) 5 SCC 584	**relied on**	**Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2163 of 2010.

From the Judgment & Order daed 01.12.2009 of the High Court at Calcutta in C.R.A. No. 77 of 1986.

R.S. Suri, Rana Mukherjee, Abhijit Sengupta, Nitish Massey, M. Indarani for the Appellant.

Satish Vig for the Respondent.

The Order of the Court was delivered by

O R D E R

D.K. JAIN, J.

1. Leave granted.

2. Challenge in this appeal, by special leave, is to the judgment, dated 1st December 2009, delivered by the High Court of Calcutta in C.R.A. No. 77 of 1986, upholding the conviction of the appellant for an offence punishable under Section 307 of the Indian Penal Code, 1860 (for short "IPC").

3. Since learned counsel for the appellant has addressed

A us only on the question of applicability of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the 2000 Act") to the facts of the case, we deem it unnecessary to state the facts, leading to the filing of this appeal, except to the extent that the incident, resulting in injuries
B to the victim took place on 6th March 1983. The first information report (for short "the FIR") was lodged and registered on 21st March, 1983 against the appellant and four other persons. Chargesheet was filed on 13th June 1983 against all the accused; who were tried for offences under Sections 306 and
C 148 of the IPC and ultimately, vide judgment dated 22nd February 1986, the Additional Sessions Judge, convicted the appellant for an offence punishable under Section 307 of the IPC and acquitted the other four accused. The appellant was sentenced to undergo rigorous imprisonment for a period of five
D years and to pay a fine of Rs.500/- with default stipulation.

4. Aggrieved by the order of conviction, the appellant carried the matter in appeal before the High Court. As afore-stated, the High Court, vide the impugned judgment has dismissed the appeal.

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5. Hence, the present appeal.

6. Vide order dated 22nd October 2010, this Court had directed the respondent-State to make inquiry so as to determine the age of the appellant. Pursuant thereto, affidavit
F dated 9th November 2010, has been filed by a Sub-Inspector of Police, Birbhum (West Bengal), on behalf of the State, stating that as per the records available with the Board of Secondary Education (West Bengal), the date of birth of the accused is 4th January 1968, which shows that the age of the appellant
G as on the date of commission of offence i.e. 6th March 1983, was 15 years, 2 months and 2 days.

7. We have heard learned counsel for the parties.

H 8. 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. (See: *Pratap Singh Vs. State of Jharkhand & Anr*[1]. and *Ravinder Singh Gorkhi Vs. State of U.P.*[2])

9. In *Pratap Singh's* case (supra), the Constitution Bench also dealt with the question as to whether the 2000 Act will be applicable in a case where criminal proceedings were initiated when the Juvenile Justice Act, 1986 (for short "the 1986 Act") was in force. Taking into consideration the provisions of Sections 3 and 20 along with the definition of the term "juvenile" in Section 2(k) of the 2000 Act, as contrasted with the definition of a "male juvenile" in Section 2(h) of the 1986 Act, by majority, it was held that the 2000 Act would be applicable in a proceeding pending in any court/authority initiated under the 1986 Act and which was pending when the 2000 Act came into force and the person concerned had not completed 18 years of age as on 1-4-2001. In other words, it was held that a male offender, against whom proceedings had been initiated under the 1986 Act in any court/authority and who had not completed the age of 18 years as on 1-4-2001, would be governed by the provisions of the 2000 Act.

10. The decision in *Pratap Singh's case* (supra) led to substitution of Section 2(l); the insertion of Section 7A and proviso and the Explanation to Section 20 of the 2000 Act by Act 33 of 2006 as also introduction of the Juvenile Justice (Care and Protection of Children) Rules, 2007 containing Rule 12, which lays down the procedure to be followed in determining the age of a child or a juvenile.

11. Section 20 of the 2000 Act, the pivotal provision, as amended, reads as follows:

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1. (2005) 3 SCC 551.
2. (2006) 5 SCC 584.

A "20. *Special provision in respect of pending cases.*—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act
B had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions
C of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such
D juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination
E of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times
F when the alleged offence was committed."

12. 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
G to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act came into force, and the provisions of the said 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
H committed.

13. Clause (l) of Section 2 of the 2000 Act provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the 2000 Act.

14. At this juncture, it will be profitable to take note of Section 7A, inserted in the 2000 Act with effect from 22-8-2006. It reads as follows:

> "7A. *Procedure to be followed when claim of juvenility is raised before any court.*—(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:
>
> Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
>
> (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a court shall be deemed to have no effect."

A 15. 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 2000 Act and the Rules framed B thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the said Act. 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 2000 Act as if the provisions C 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.

16. It is, thus, manifest from a conjoint reading of Sections D 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 E 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.

17. In the instant case, according to the report submitted F on behalf of the State, the appellant was about 15 years old at the time of the commission of the offence. The correctness of the report is not in question and, therefore, in light of the afore-stated legal position, the appellant has to be held to be a juvenile, within the meaning of Section 2(l) of the amended 2000 G Act, and is to be governed by the provisions of the said Act.

18. Having held so, the next question for consideration is as to what order of sentence is to be passed against the appellant, who stands convicted for offence punishable under Section 307 IPC, correctness whereof is not put in issue before H us. The appellant is now aged about 42 years. Keeping his

age in view, we feel that 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. A B

19. Accordingly, while sustaining the conviction of the appellant, we quash the sentence awarded to him and direct his release forthwith, if not required in any other case. The appeal succeeds partly, to the extent indicated above.

D.G. Appeal partly allowed.