SUPREME COURT OF INDIA

Abdul Razzaq

Vs.

State of U.P.

(T.S.Thakur and Adarsh Kumar Goel JJ.)

16.03.2015

JUDGMENT

ADARSH KUMAR GOEL, J.

1. This application has been filed under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Act") seeking release of the petitioner who has been found to be juvenile. Since special leave petition and review petition have been dismissed and we are inclined to allow the application, orders dismissing the special leave petition and review petition will stand recalled.

2. The petitioner was tried for the offence under Section 302 of the Indian Penal Code ('IPC') for causing the death of Amir Ullah on 18th February, 1979 at Firozabad, Uttar Pradesh. He was convicted under Section 302 and sentenced to undergo life imprisonment by the Court of Sessions Judge, Agra in Sessions Trial No.325 of 1979 vide judgment dated 29th September, 1980.

3. The conviction and sentence of the petitioner was affirmed by the High Court of Judicature at Allahabad on 21 st February, 2000. This Court vide Order dated 29 th September, 2000 dismissed the special leave petition.

Review Petition filed against the said order was dismissed on 20th July, 2010.

4. Thereafter, the High Court of Allahabad vide order dated 24th May, 2012 in Crl. (PIL) Misc. W.P. No.855 of 2012 Sister Sheeba Jose vs. State of U.P. & Ors. directed suo motu action under proviso to Section 7-A of the Act. The U.P. State Legal Services Authority took steps for implementation of the said judgment. The Juvenile Justice Board, Agra vide Order dated 2 nd July, 2013 examined the case

of the petitioner and held that on the date of incident, the petitioner was less than 18 years of age.

5. On above basis, the present application has been filed with a prayer that the petitioner be released from custody.

> It has also been stated in the application that the petitioner has already undergone more than 14 years of imprisonment.

6. Notice was issued by this Court on 8 th October, 2014, in response to which, the State of U.P. has entered appearance.

7. We have heard learned counsel for the parties.

8. Learned counsel for the petitioner pointed out that since the petitioner was a juvenile on the date of occurrence, he is entitled to the benefit of provisions of the Act. It has also been pointed out that his date of birth was noted to be 18th September, 1962 in the judgment of the High Court. Since he was taken to be more than 16 years of age while the age of juvenility prior to the present Act was 18 years, the petitioner was not held entitled to the benefit of the said Act. The law having changed with retrospective effect, the petitioner claims the 76 benefit of juvenility.

9. The legal position on the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time. Reference may be made to Section 7-A and 20 of the Act and Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 which are as follows:

> "Section 7-A. 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 enquiry, 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:
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> Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect." "Section 20. Special provision in respect of pending cases.—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

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

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (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 when the alleged offence was committed." "Rule 12. Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose. (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail. (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining— (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate

given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

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

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

10. The above provisions clearly show that 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, as in the present case.

11. In Hari Ram vs. State of Rajasthan and Anr.1, it was observed:

> "49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which 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 the Act and the Rules made thereunder which includes the definition of "juvenile" in Sections 2(k) and 2(l) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act.
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> (emphasis supplied)
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> 50. The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein also it has been clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2(l) even if the juvenile ceases to be so "on or before the date of commencement of this Act" and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed.
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> (emphasis supplied)
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> 51. Apart from the aforesaid provisions of the 2000 Act, as amended, and the Juvenile Justice 1 (2009) 13 SCC 211 Rules, 2007, Rule 98 thereof has to be read in tandem with Section 20 of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006, which provides that even in disposed 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 a juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for the 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.
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> 52. In addition to the above, Section 49 of the Juvenile Justice Act, 2000 is also of relevance and is reproduced hereinbelow:
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> "49. Presumption and determination of age.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile

or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person."

53. Sub-section (1) of Section 49 vests the competent authority with the power to make due inquiry as to the age of a person brought before it and for the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a finding as to Page 8 Crl. M.P. No.17870/2014 in SLP (Crl.) No.2838 of 2000 whether the person is a juvenile or a child or not, stating his age as nearly as may be.

54. Sub-section (2) of Section 49 is of equal importance as it provides that no order of a competent authority would be deemed to have become invalid merely on account of any subsequent proof that the person, in respect of whom an order is made, is not a juvenile or a child, and the age recorded by the competent authority to be the age of the person brought before it, would, for the purpose of the Act, be deemed to be the true age of a child or a juvenile in conflict with law.

55. Sub-rule (3) of Rule 12 indicates that the age determination inquiry by the court or Board, by seeking evidence, is to be derived from:

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

(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;

56. Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted Medical Board, which would declare the age of the juvenile or the child. In

case exact assessment of the age cannot be done, the court or the Board or as the case may be, the Child Welfare Committee, for reasons to be recorded by it, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within a margin of one year.

57. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals.

58. Of the two main questions decided in Pratap Singh case [(2005) 3 SCC 551: 2005 SCC (Cri) 742], one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

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

12. The above view was reiterated by a bench of three Judges in Abuzar Hossain alias Gulam Hossain vs. State of West Bengal2, as follows:-

"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the 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 the appeal court.

2 (2012) 10 SCC 489 39.2. 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.

39.3. 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 Rules 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 : (2009) 3 SCC (Cri) 431 and Pawan (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522 these documents were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857 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 7-A and order an enquiry for determination of the age of the delinquent.

39.4. 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 the age of the delinquent. 39.5. 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 the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of

the 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. 39.6. 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 the threshold whenever raised.

13. Again, in Union of India vs. Ex-GNR Ajeet Singh3 it was held:-

> "19. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently 3 (2013) 4 SCC 186 maintained the conviction, but has set aside the sentence.
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> (See Jayendra v. State of U.P. [(1981) 4 SCC 149 : 1981 SCC (Cri) 809 : AIR 1982 SC 685], Gopinath Ghosh v. State of W.B. [1984 Supp SCC 228 : 1984 SCC (Cri) 478 : AIR 1984 SC 237], Bhoop Ram v. State of U.P. [(1989) 3 SCC 1 : 1989 SCC (Cri) 486 : AIR 1989 SC 1329] , Umesh Singh v. State of Bihar [(2000) 6 SCC 89 : 2000 SCC (Cri) 1026 : AIR 2000 SC 2111], Akbar Sheikh v. State of W.B. [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431], Hari Ram v. State of Rajasthan [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987], Babla v. State of Uttarakhand [(2012) 8 SCC 800 : (2012) 3 SCC (Cri) 1067] and Abuzar Hossain v. State of W.B. [(2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83])"

14. Reference may also be made to Jintendra Singh alias Babboo Singh and Anr. vs. State of Uttar Pradesh4 laying down as follows:

> "80. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the court concerned will continue and be taken to their logical end except that the court upon finding the

juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

81. The matter can be examined from another angle. Section 7-A(2) of the Act prescribes the procedure to be followed when a claim of 4 (2013) 11 SCC 193 juvenility is made before any court. Section 7- A(2) is as under:

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

82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any court, upon such court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) 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 expressio unius est exclusio alterius, it would be reasonable to hold that the law insofar 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. Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7-A(2) of the Act."

15. Faced with the above, learned counsel for the State fairly stated that the petitioner may be entitled to the relief sought. He, however, points out that a person claiming juvenile must approach the trial court first. Since in the present case, the High Court has declined to entertain an application as per order dated 2 December, 2014 a copy of which has been produced, we consider it appropriate to entertain this application.

16. In view of the above undisputed legal position, we have no option but to allow this application and while leaving the conviction undisturbed, set aside the sentence.

> The petitioner may be released from custody forthwith unless required in any other case.