

A SATYA DEO @ BHOOREY

v.

STATE OF UTTAR PRADESH

(Criminal Appeal No.860 of 2019)

B OCTOBER 07, 2020

[S. ABDUL NAZEER AND SANJIV KHANNA, JJ.]

- Juvenile Justice (Care and Protection of Children) Act, 2000 – ss.2(l), 7A, 15, 16(2), 20, 64, 69 – Scheme and applicability of 2000 Act – Appellant and co-accused persons convicted by trial court in FIR dtd. 11.12.81 u/s.302 r/w s.34, IPC and sentenced to undergo imprisonment for life – Confirmed by impugned judgment – SLP in respect of co-accused persons dismissed, however in case of appellant notice was issued on the plea of juvenility – Held: Supreme court at this stage can decide and determine the question of juvenility of the appellant, notwithstanding the fact that he was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced – As the appellant was less than 18 years of age on the date of commission of offence on 11.12.81, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act – Further, in light of s.6, General Clauses Act r/w s.25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a right which he acquired and has fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 01.04.2001 – In terms of s.25 of the 2015 Act, 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced – Appellant has undergone incarceration for more than 2 years thus far – Conviction of the appellant is upheld, but sentence of life imprisonment set aside – Matter remitted to the Juvenile Justice Board for passing appropriate order/directions u/s.15 of the 2000 Act including the question of determination and payment of appropriate quantum of fine and compensation to be awarded to the family of deceased – Juvenile Justice Act, 1986 – Juvenile Justice (Care and Protection) Act, 2015 – s.2, 25, 111 – General Clauses Act, 1897 – s.6 – Penal Code, 1860 – s.302 r/w s.34.*

Juvenile Justice (Care and Protection of Children) Act, 2000 A
– Applicability of vis-à-vis 2015 Act – Discussed – Juvenile Justice (Care and Protection) Act of 2015.

Juvenile Justice (Care and Protection) Act, 2015 – s.25 – Scope and application of – Discussed – Juvenile Justice (Care and Protection of Children) Act, 2000. B

Partly allowing the appeal, the Court

HELD: 1.1 In light of the conflicting views expressed by this Court on application of the 2000 Act to the pending proceedings, vide decisions in *Arnit Das v. State of Bihar* and *Umesh Chandra v. State of Rajasthan*, the matter was referred to a Constitution Bench and decided in the case reported as *Pratap Singh v. State of Jharkhand and Another*. Subsequent to the decision of the Constitution Bench in *Pratap Singh*, several amendments were made to the 2000 Act by the Amendment Act No. 33 of 2006. These amendments are significant, but first Section 2(l) of the 2000 Act will be referred which defines “juvenile in conflict with law” In terms of clause (l) to section 2 of the 2000 Act, appellant, being less than 18 years of age, was juvenile on the date of commission of offence. Section 20 of the 2000 Act, which provides a special provision in respect of pending cases, post the amendment vide Act 33 of 2006, Section 20 is a special provision with respect to pending cases and begins with a limited non-obstante or overriding clause notwithstanding anything contained in the 2000 Act. Legislative intent clearly expressed states that all proceedings in respect of a juvenile pending in any court on the date on which the 2000 Act came into force shall continue before that court as if the 2000 Act had not been passed. Though the proceedings are to continue before the court, the section states that if the court comes to a finding that a juvenile has committed the offence, it shall record the finding but instead of passing an order of sentence, forward the juvenile to the Juvenile Justice Board (Board) which shall then pass orders in accordance with the provisions of the 2000 Act, as if the Board itself had conducted an inquiry and was satisfied that the juvenile had committed the offence. The proviso however states that the Board, for any adequate and special reasons, can review the case and pass appropriate order in the interest of the juvenile.

- A **Explanation added to Section 20 vide Act 33 of 2006, which again is of significant importance, states that the court where 'the proceedings' are pending 'at any stage' shall determine the question of juvenility of the accused. The expression 'all pending cases' includes not only trial but even subsequent proceedings by way of appeal, revision etc. or any other criminal proceedings.**
- B **Lastly, 2000 Act applies even to cases where the accused was a juvenile on the date of commission of the offence, but had ceased to be a juvenile on or before the date of commencement of the 2000 Act. In even such cases, provisions of the 2000 Act are to apply as if these provisions were in force for all purposes and at**
- C **all material time when the offence was committed. Thus, in respect of pending cases, Section 20 authoritatively commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence.**
- D **The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the**
- E **provisions of the 2000 Act. [Paras 9-11][136-E; 137-C-E; 138-C-H; 139-A-C]**

Arnit Das v. State of Bihar (2000) 5 SCC 488 : [2000]

1 Suppl. SCR 69; Umesh Chandra v. State of Rajasthan (1982) 2 SCC 202 : [1982] 3 SCR 583; Pratap Singh

v. State of Jharkhand and Another (2005) 3 SCC 551 : [2005] 1 SCR 1019 – referred to.

- 1.2 By the amendment Act No. 33 of 2006, Section 7-A was inserted in the 2000 Act setting-out the procedure to be followed by the court to determine the claim of juvenility. Section 7A came into effect on 22.08.2006. Proviso to Section 7A is important as it states that the claim of juvenility may be raised before 'any court' 'at any stage', even after the final disposal of the case. When such claim is made, it shall be determined in terms of the provisions of the 2000 Act and the rules framed thereunder, even when the accused had ceased to be a juvenile on or before**

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commencement of the 2000 Act. Thus it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 01.04.2001. He would be entitled to benefit of the 2000 Act. Section 64 of the 2000 Act was also amended by Act No. 33 of 2006 by incorporating a proviso and explanation and by replacing the words 'may direct' with the words 'shall direct' in the main provision. Substitution of the words 'may direct' with 'shall direct' in the main provision is to clarify that the provision is mandatory and not directory. Section 64 has to be read harmoniously with the newly added proviso and explanation and also other amendments made vide Act 33 of 2006 in Section 20 and by way of inserting Section 7A in the 2000 Act. The main provision states that where a juvenile in conflict with law is undergoing any sentence of imprisonment at the commencement of the 2000 Act, he shall, in lieu of undergoing the sentence, be sent to a special home or be kept in a fit institution in such manner as the state government thinks fit for the remainder of the period of sentence. Further, the provisions of the 2000 Act are to apply as if the juvenile had been ordered by the Board to be sent to the special home or institution and ordered to be kept under protective care under sub-section (2) of Section 16 of the Act. The proviso states that the state government or the Board, for any adequate and special reasons to be recorded in writing, review the case of the juvenile in conflict with law who is undergoing sentence of imprisonment and who had ceased to be a juvenile on or before the commencement of the 2000 Act and pass appropriate orders. However, it is the explanation which is of extreme significance as it states that in all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment on the date of commencement of the 2000 Act, the juvenile's case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) to Section 2 and other provisions and rules made under the 2000 Act irrespective of the fact that the juvenile had ceased to be a juvenile. Such juvenile shall be sent to special home or fit institution for the remainder period of his sentence but such sentence shall not exceed the maximum period provided in Section 15 of the 2000 Act. The statute overrules and modifies the sentence awarded, even in decided cases. [Paras 12, 13][139-C-H; 140-A-C; 141-B-G]

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- A 1.3 This court at this stage can decide and determine the question of juvenility of appellant, notwithstanding the fact that appellant was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced. As appellant was less than 18 years of age on the date of commission of offence on 11.12.1981, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act. This brings this Court to the question whether the Juvenile Justice (Care and Protection) Act of 2015 (2015 Act) would be applicable as the 2015 Act vide sub-section (1) to Section 111 repeals the 2000 Act, *albeit* sub-section (2) to
- B Section 111 states that notwithstanding this repeal anything done or any action taken under the 2000 Act shall be deemed to have been done or taken under the corresponding provisions of the 2015 Act. Section 69 ‘Repeal and saving clause’ of the 2000 Act is identical as sub-section (1) thereof had repealed the 1986 Act and sub-section (2) provides that notwithstanding such repeal anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. However, what is important and relevant is Section 25 of the 2015 Act which, as per the headnote to that Section, incorporates ‘special provision in respect of pending cases’. Section 25 is a non-obstante clause which applies to all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of the 2015 Act, that is, 31st December 2015. It states that the pending proceedings shall be continued in that Board or court as if the 2015 Act had not been passed. The use of the word ‘any’ before the board or court in Section 25 of the 2015 Act, would mean and include any court including the appellate court or a court before which the revision petition is pending. This is also apparent from the use of the words ‘a child alleged or found to be in conflict with law’. The word ‘found’ is used in past-tense and would apply in cases where an order/judgment has been passed. The word ‘alleged’ would refer to those proceedings where no final order has been passed and the matter is sub-judice. Further, Section 25 of the 2015 Act applies to proceedings before the board or the court and as noticed above, it would include any court, including the appellate court or the
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court where the revision petition is pending. In the context of Section 25, the expression ‘court’ is not restricted to mean a civil court which has the jurisdiction in the matter of ‘adoption’ and ‘guardianship’ in terms of clause (23) to Section 2 of the 2015 Act. The definition clause is applicable unless the context otherwise requires. In case of Section 25, the legislature is obviously not referring to a civil court as the section deals with pending proceedings in respect of a child alleged or found to be in conflict with law, which cannot be proceedings pending before a civil court. Since the Act of 2015 protects and affirms the application of the 2000 Act to all pending proceedings, this Court does not read that the legislative intent of the 2015 Act is to the contrary, that is, to apply the 2015 Act to all pending proceedings. Section 6 of the General Clauses Act, 1897 that provides the consequence of “repeal” of an enactment. Consequently, in light of Section 6 of the General Clauses Act read with Section 25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a right which he acquired and has fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 01.04.2001. In terms of Section 25 of the 2015 Act, 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced. (In the present case, this Court is not required to examine and decide the question whether 2000 Act or the 2015 Act would apply when the offence was committed before the enactment of the 2015 Act but the charge-sheet was filed after enactment of the 2015 Act. The answer would require examination of clause (1) to Article 20 of the Constitution and several other aspects as the 2015 Act provide an entirely different regime in respect of children in conflict with law and the procedure to be followed in such cases. These aspects and issues have not been argued.) [Paras 17, 18][146-E-H; 147-A-H; 148-A-G]

*Akhtari Bi v. State of M.P. (2001) 4 SCC 355 : [2001]
2 SCR 626 – relied on.*

1.4 The procedure adopted by the learned District and Sessions Judge is not challenged and questioned. Appellant was less than 18 years of age on the date of commission of offence

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- A and this remains undisputed and unchallenged. Appellant has undergone incarceration for more than 2 years thus far. While the conviction of appellant is upheld, the sentence of life imprisonment is set aside. The matter is remitted to the jurisdiction of the Board for passing appropriate order/directions
- B determination and payment of appropriate quantum of fine and the compensation to be awarded to the family of the deceased. [Paras 21, 22][150-C-F]

Gaurav Kumar @ Monu v. State of Haryana (2019) 4

- C **SCC 549 : [2019] 3 SCR 372 – distinguished.**

Dharambir v. State (NCT of Delhi) and Another (2010)

5 SCC 344 : [2010] 5 SCR 137; Mumtaz v. State of U.P

(2016) 11 SCC 786 : [2016] 3 SCR 434; Hari Ram v. State of Rajasthan (2009) 13 SCC 211 : [2009]

- D **7 SCR 623; Jitendra Singh v. State of Uttar Pradesh (2013) 11 SCC 193 : [2013] 13 SCR 764 – relied on.**

Case Law Reference

	[2000] 1 Suppl. SCR 69	referred to	para 9
E	[1982] 3 SCR 583	referred to	para 9
	[2005] 1 SCR 1019	referred to	para 9
	[2010] 5 SCR 137	relied on	para 14
	[2016] 3 SCR 434	relied on	para 15
F	[2009] 7 SCR 623	relied on	para 16
	[2001] 2 SCR 626	relied on	para 18
	[2019] 3 SCR 372	distinguished	para 19
	[2013] 13 SCR 764	relied on	para 19

- G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 860 of 2019.

From the Judgment and Order dated 20.04.2018 of the High Court of Allahabad, Bench at Lucknow in Criminal Appeal No. 994 of 1982.

Apoorv Kurup, Nirmal Ambastha, Ishan Baghel, Ms. Upma Bhattacharjee, Ashish Madaam, Ms. Taruna Ardhendumauli Prasad, Parmanand Pandey, Utkarsh Pandey, Advs. for the appearing parties.

The Judgment of the Court was delivered by

SANJIV KHANNA, J.

1. By the order dated 17.08.2018, the Special Leave Petition, challenging the judgment dated 20.4.2018 of the Lucknow Bench of the Allahabad High Court, filed by Keshav Ram and Ram Kuber was dismissed, *albeit* in the case of co-accused Satya Deo@ Bhoorey notice was issued on the plea of juvenility. The impugned judgment had confirmed the conviction of Keshav Ram, Ram Kuber and Satya Deo by the trial court in FIR No. 156/1981 dated 11.12.1981 Police Station Gilaula, Distt. Bahraich, Uttar Pradesh for the offence under Section 302 read with section 34 of the Indian Penal Code, 1860 ('IPC' for short) and the order of sentence directing them to undergo imprisonment for life.

2. By order dated 02.05.2019 leave was granted in the case of Satya Deo.

3. By order dated 22.11.2019 the trial court was directed to conduct an inquiry to ascertain if Satya Deo was a juvenile on the date of occurrence i.e. 11.12.1981, on the basis of material which would be placed on record.

4. Pursuant to the directions, the First Additional District and Sessions Judge, Bahraich, Uttar Pradesh has conducted an inquiry and submitted the report dated 06.03.2020. As per the report, the date of birth of Satya Deo is 15.4.1965. Accordingly, he was 16 years 7 months and 26 days of age on the date of commission of the offence i.e. 11.12.1981. The report relies on the Transfer Certificate (in original) issued by Ram Narayan Singh Inter College, Ramnagar Khajuri, Bahraich, and the Admission Register of Primary School, Pairi, which documents were proved by Sh. Krishn Deo, Clerk at Ram Narayan Singh Inter College, Ramnagar Khajuri, Bahraich, and Smt. Anupam Singh, in-charge head-mistress of Primary School, Pairi, respectively. Further, Satya Deo had appeared in class-10 examination vide Roll. No. 9020777, and his date of birth as recorded in the gazette relating to this examination is 15.04.1965.

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A 5. The report states that the complainant had died and consequently notice was served on the heirs of the complainant, who did not appear before the First Additional District and Sessions Judge, Bahraich. The prosecution had not led any evidence.

B 6. The date of birth of Satya Deo is undisputed and not challenged before us.

7. Notwithstanding this finding, the First Additional District and Sessions Judge, Bahraich has observed that Satya Deo was not a juvenile as per the Juvenile Justice Act, 1986 (1986 Act) as he was more than 16 year of age on the date of commission of the offence i.e. 11.12.1981.

C 8. The conundrum is in light of the definition of 'juvenile' under the 1986 Act, which was below sixteen years in case of a boy and below eighteen years in case of a girl on the date the boy or girl is brought for first appearance before the court or the competent authority, whereas the 2000 Act, as noticed below, does not distinguish between a boy or

D girl and a person under the age of eighteen years is a juvenile. Further, under the 2000 Act, the age on the date of commission of the offence is the determining factor.

E 9. In light of the conflicting views expressed by this Court on application of the 2000 Act to the pending proceedings, vide decisions in *Arnit Das v. State of Bihar*¹ and *Umesh Chandra v. State of Rajasthan*², the matter was referred to a Constitution Bench and decided in the case reported as *Pratap Singh v. State of Jharkhand and Another*³. The Constitution Bench formulated two points for decision, namely:

F "(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court/competent authority.

G (b) Whether the Act of 2000 will be applicable in the case a proceeding is initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 1-4-2001."

On the second question, the Constitution Bench held that the 2000 Act would be applicable in a pending proceeding instituted under the

¹(2000) 5 SCC 488

²(1982) 2 SCC 202

H ³(2005) 3 SCC 551

1986 Act in any court or authority, if the person had not completed eighteen years of age as on 1st April 2001, when the 2000 Act came into force. On the first question, it was held that the reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in a court. Consequently, the 2000 Act would have prospective effect and not retrospective effect except in cases where the person had not completed the age of eighteen years on the date of commencement of the 2000 Act. Other pending cases would be governed by the provisions of the 1986 Act.

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10. Subsequent to the decision of the Constitution Bench in *Pratap Singh* (supra), several amendments were made to the 2000 Act by the Amendment Act No. 33 of 2006. These amendments are significant, but first we will begin by referring to Section 2(l) of the 2000 Act which defines “juvenile in conflict with law” as:

“(l) “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”

In terms of clause (l) to section 2 of the 2000 Act, Satya Deo, being less than 18 years of age, was juvenile on the date of commission of offence.

11. Section 20 of the 2000 Act, which provides a special provision in respect of pending cases, post the amendment vide Act 33 of 2006, reads:

“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:

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- A *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.*
- B *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.”*
- C Section 20 is a special provision with respect to pending cases and begins with a limited non-obstante or overriding clause notwithstanding anything contained in the 2000 Act. Legislative intent clearly expressed states that all proceedings in respect of a juvenile pending in any court on the date on which the 2000 Act came into force shall continue before that court as if the 2000 Act had not been passed. Though the proceedings are to continue before the court, the section states that if the court comes to a finding that a juvenile has committed the offence, it shall record the finding but instead of passing an order of
- D sentence, forward the juvenile to the Juvenile Justice Board (Board) which shall then pass orders in accordance with the provisions of the 2000 Act, as if the Board itself had conducted an inquiry and was satisfied that the juvenile had committed the offence. The proviso however states that the Board, for any adequate and special reasons, can review the case and pass appropriate order in the interest of the juvenile. Explanation
- E added to Section 20 vide Act 33 of 2006, which again is of significant importance, states that the court where ‘the proceedings’ are pending ‘at any stage’ shall determine the question of juvenility of the accused. The expression ‘all pending cases’ includes not only trial but even subsequent proceedings by way of appeal, revision etc. or any other
- F criminal proceedings. Lastly, 2000 Act applies even to cases where the accused was a juvenile on the date of commission of the offence, but had ceased to be a juvenile on or before the date of commencement of the 2000 Act. In even such cases, provisions of the 2000 Act are to apply as if these provisions were in force for all purposes and at all material time when the offence was committed.
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Thus, in respect of pending cases, Section 20 authoritatively A commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence. The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the provisions of the 2000 Act.

12. By the amendment Act No. 33 of 2006, Section 7-A was C inserted in the 2000 Act setting-out the procedure to be followed by the court to determine the claim of juvenility. Section 7A, which came into effect on 22.08.2006, reads:

“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:

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.”

Proviso to Section 7A is important for our purpose as it states that the claim of juvenility may be raised before ‘any court’ ‘at any stage’, even after the final disposal of the case. When such claim is made, it H

- A shall be determined in terms of the provisions of the 2000 Act and the rules framed thereunder, even when the accused had ceased to be a juvenile on or before commencement of the 2000 Act. Thus it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 01.04.2001. He would be entitled to benefit of the 2000 Act.

13. Section 64 of the 2000 Act was also amended by Act No. 33 of 2006 by incorporating a proviso and explanation and by replacing the words 'may direct' with the words 'shall direct' in the main provision.

- C Post the amendment, Section 64 reads as under:

"64. Juvenile in conflict with law undergoing sentence at commencement of this Act-

- In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit 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.*

- Provided that the State Government, or as the case may be the board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.*

- Explanation :– In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) of section 2 and other provisions contained in this act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or*

before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this act.” A

Substitution of the words ‘may direct’ with ‘shall direct’ in the main provision is to clarify that the provision is mandatory and not directory. Section 64 has to be read harmoniously with the newly added proviso and explanation and also other amendments made vide Act 33 of 2006 in Section 20 and by way of inserting Section 7A in the 2000 Act. The main provision states that where a juvenile in conflict with law is undergoing any sentence of imprisonment at the commencement of the 2000 Act, he shall, in lieu of undergoing the sentence, be sent to a special home or be kept in a fit institution in such manner as the state government thinks fit for the remainder of the period of sentence. Further, the provisions of the 2000 Act are to apply as if the juvenile had been ordered by the Board to be sent to the special home or institution and ordered to be kept under protective care under sub-section (2) of Section 16 of the Act. The proviso states that the state government or the Board, for any adequate and special reasons to be recorded in writing, review the case of the juvenile in conflict with law who is undergoing sentence of imprisonment and who had ceased to be a juvenile on or before the commencement of the 2000 Act and pass appropriate orders. However, it is the explanation which is of extreme significance as it states that in all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment on the date of commencement of the 2000 Act, the juvenile’s case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) to Section 2 and other provisions and rules made under the 2000 Act irrespective of the fact that the juvenile had ceased to be a juvenile. Such juvenile shall be sent to special home or fit institution for the remainder period of his sentence but such sentence shall not exceed the maximum period provided in Section 15 of the 2000 Act. The statute overrules and modifies the sentence awarded, even in decided cases. B C D E F G

14. This Court in *Dharambir v. State (NCT of Delhi) and Another*⁴ had analysed the scheme and application of the 2000 Act to the accused who were below the age of eighteen years on the date of

- A commission of offence which was committed prior to the enactment of the 2000 Act, to opine and hold:

- B *“14. Proviso to sub-section (1) of Section 7-A 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 thereunder, 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.*
- C *15. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 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 1-4-2001 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 view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan [(2009) 13 SCC 211: (2010) 1 SCC (Cri) 987].”*

- E *15. In **Mumtaz v. State of U.P**⁵, while referring to several earlier decisions, this court dealt with effect of Section 20 of the 2000 Act and its inter-play with the 1986 Act, to elucidate:*

- G *“18. The effect of Section 20 of the 2000 Act was considered in **Pratap Singh v. State of Jharkhand** [**Pratap Singh v. State of Jharkhand**, (2005) 3 SCC 551: 2005 SCC (Cri) 742] and it was stated as under: (SCC p. 570, para 31)*

“31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a *non obstante* clause. The sentence ‘notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force’ has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.”

19. In *Bijender Singh v. State of Haryana* [*Bijender Singh v. State of Haryana*, (2005) 3 SCC 685 : 2005 SCC (Cri) 889], the legal position as regards Section 20 was stated in the following words: (SCC pp. 687-88, paras 8-10 & 12):

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

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question

- A *whether a person above 16 years becomes “juvenile” within the purview of the 2000 Act must be answered having regard to the object and purport thereof.*
- B *10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short “the Board”) which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations. ...*
- C *11. ****
- D *12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.”*
- E **20. In Dharambir v. State (NCT of Delhi) [Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274] the determination of juvenility even after conviction was one of the issues and it was stated: (SCC p. 347, paras 11-12)**
- F *“11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act came into force, and the provisions of the Act would apply as if the said provision*
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had been in force for all purposes and for all material A times when the alleged offence was committed.

12. 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.” C

21. Similarly in *Kalu v. State of Haryana* [*Kalu v. State of Haryana*, (2012) 8 SCC 34 : (2012) 3 SCC (Cri) 761] this Court summed up as under: (SCC p. 41, para 21) D

“21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been F G

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A *in force for all purposes and for all material times when the alleged offence was committed."*

16. This position of law and principle was affirmed by this court for the first time in *Hari Ram v. State of Rajasthan*⁶ in the following words:

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

E 17. In light of the legal position as expounded above and in the aforementioned judgments, this court at this stage can decide and determine the question of juvenility of Satya Deo, notwithstanding the fact that Satya Deo was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced. As Satya Deo was less than 18 years of age on the date of commission of offence on 11.12.1981, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act.

F 18. This brings us to the question whether the Juvenile Justice (Care and Protection) Act of 2015 (2015 Act) would be applicable as the 2015 Act vide sub-section (1) to Section 111 repeals the 2000 Act, *albeit* sub-section (2) to Section 111 states that notwithstanding this repeal anything done or any action taken under the 2000 Act shall be deemed to have been done or taken under the corresponding provisions of the 2015 Act. Section 69 'Repeal and saving clause' of the 2000 Act is

H ⁶(2009) 13 SCC 211

identical as sub-section (1) thereof had repealed the 1986 Act and sub-section (2) provides that notwithstanding such repeal anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. However, what is important and relevant for us is Section 25 of the 2015 Act which, as per the headnote to that Section, incorporates 'special provision in respect of pending cases' and reads:

"Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

Section 25 is a non-obstante clause which applies to all proceedings in respect of a child⁷ alleged or found to be in conflict with law pending before any Board or court on the date of commencement of the 2015 Act, that is, 31st December 2015. It states that the pending proceedings shall be continued in that Board or court as if the 2015 Act had not been passed. In *Akhtari Bi v. State of M.P.*⁸, it was observed that the right to appeal being a statutory right, the trial court's verdict does not attain finality during the pendency of the appeal and for that purpose the trial is deemed to be continuing despite conviction. Thus, the use of the word 'any' before the board or court in Section 25 of the 2015 Act, would mean and include any court including the appellate court or a court before which the revision petition is pending. This is also apparent from the use of the words 'a child alleged or found to be in conflict with law'. The word 'found' is used in past-tense and would apply in cases where an order/judgment has been passed. The word 'alleged' would refer to those proceedings where no final order has been passed and the matter is sub-judice. Further, Section 25 of the 2015 Act applies to proceedings before the board or the court and as noticed above, it would include any court, including the appellate court or the court where the revision petition is pending. In the context of Section 25, the expression 'court' is not restricted to mean a civil court which has the jurisdiction in the matter of 'adoption' and 'guardianship' in terms of clause (23) to Section 2 of the 2015 Act⁹. The definition clause is applicable unless the context otherwise requires.

⁷The expression 'child' as per clause (12) to Section 2 of the 2015 Act reads – 'a person who has not completed eighteen years of age'.

⁸(2001) 4 SCC 355

⁹"(23) – "court" means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts'."

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- A In case of Section 25, the legislature is obviously not referring to a civil court as the section deals with pending proceedings in respect of a child alleged or found to be in conflict with law, which cannot be proceedings pending before a civil court. Since the Act of 2015 protects and affirms the application of the 2000 Act to all pending proceedings, we do not read that the legislative intent of the 2015 Act is to the contrary, that is, to apply the 2015 Act to all pending proceedings.

Section 6 of the General Clauses Act, 1897 that provides the consequence of “repeal” of an enactment reads:

- C **6. Effect of repeal.** *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:*

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- D (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;*
- E Consequently, in light of Section 6 of the General Clauses Act read with Section 25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a right which he acquired and has fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 01.04.2001. In terms of Section 25 of the 2015 Act, 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced. (In the present case, we are not required to examine and decide the question whether 2000 Act or the 2015 Act would apply when the offence was committed before the enactment of the 2015 Act but the charge-sheet was filed after enactment of the 2015 Act. The answer would require examination of clause (1) to Article 20 of the Constitution and several other aspects as the 2015 Act provide an entirely different regime in respect of children in conflict with law and the procedure to be followed in such cases. These aspects and issues have not been argued before us.)

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19. Decision of this court in ***Gaurav Kumar @ Monu v. State of Haryana***¹⁰, which was relied upon by the learned counsel for the state is of no avail as this decision is on interpretation and application of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, for the procedure to be followed in determination of age. The procedure adopted by the learned District and Sessions Judge is not challenged and questioned before us. We would again record that Satya Deo was less than 18 years of age on the date of commission of offence and this remains undisputed and unchallenged.

20. Satya Deo has undergone incarceration for more than 2 years thus far. In ***Mumtaz @ Muntyaz*** (supra), dealing with quantum and nature of punishment which should be given to a person who was a juvenile on the date of commission of offence, this court, while placing reliance upon an earlier decision in ***Jitendra Singh v. State of Uttar Pradesh***¹¹, had held:

22. It is thus well settled that in terms of Section 20 of the 2000 Act, 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 would continue and be taken to the logical end subject to an exception that upon finding the juvenile to be guilty, the court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the 2000 Act. What kind of order could be passed in a matter where claim of juvenility came to be accepted in a situation similar to the present case, was dealt with by this Court in Jitendra Singh v. State of U.P. [Jitendra Singh v. State of U.P., (2013) 11 SCC 193 : (2013) 4 SCC (Cri) 725] in the following terms: (SCC pp. 210-11, para 32)

“32. 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

¹⁰(2019) 4 SCC 549
¹¹(2013) 11 SCC 193

- A *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.”*
- B *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.”*
- C *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.”*
21. Following the aforesaid ratio and the legal position elucidated above, while we uphold the conviction of Satya Deo, we would set aside the sentence of life imprisonment. We would remit the matter to the jurisdiction of the Board for passing appropriate order/directions under
- D Section 15 of the 2000 Act including the question of determination and payment of appropriate quantum of fine and the compensation to be awarded to the family of the deceased. We make no affirmative or negative comments either way on the order/direction under Section 15 of the 2000 Act.
- E 22. We would, accordingly, direct the jail authorities to produce Satya Deo before the Board within seven days from the date of receipt of a copy of this judgment. The Board shall then pass appropriate order regarding detention and custody and proceed thereafter to pass order/directions under the 2000 Act. -
- F 23. The appeal filed by the Satya Deo is partly allowed in the aforesaid terms and all the pending application are disposed of.

Divya Pandey

Appeal partly allowed.