

Hari Ram vs State Of Rajasthan & Anr on 5 May, 2009

Author: Altamas Kabir

Bench: Cyriac Joseph, Altamas Kabir

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 907 ___ OF 2009
(Arising out of S.L.P.(Crl.)No.3336 of 2006)

Hari Ram	...	Appellant
Vs.		
State of Rajasthan & Anr.	...	Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. This appeal raises certain questions which are fundamental to the understanding and implementation of the objects for which the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Juvenile Justice Act, 2000') was enacted. The said law which was enacted to deal with offences committed by juveniles, in a manner which was meant to be different from the law applicable to adults, is yet to be fully appreciated by those who have been entrusted with the responsibility of enforcing the same, possibly on account of their inability to adapt to a system which, while having the trappings of the general criminal law, is, however, different therefrom. The very scheme of the aforesaid Act is rehabilitatory in nature and not adversarial which the courts are generally used to. The implementation of the said law, therefore, requires a complete change in the mind-set of those who are vested with the authority of enforcing the same, without which it will be almost impossible to achieve the objects of the Juvenile Justice Act, 2000.

3. The appellant, Hari Ram, was arrested along with several others on 30.11.1998, for the alleged commission of offences under Sections 148, 302, 149, Section 325 read with Section 149 and Section 323/149 Indian Penal Code. After the case was committed for trial, the Additional Sessions Judge, Didwana, by his order dated 3rd April, 2000, in Sessions Case No.54 of 1999 determined the age of the accused to be below 16 years on the date of commission of the offence and after declaring him to be a juvenile, directed that he be tried by the Juvenile Justice Board, Ajmer, Rajasthan.

4. This appeal has been filed against the common order dated 7th December, 2005, passed by the Jodhpur Bench of the Rajasthan High Court in Crl. Revision Petition No.165 of 2000, filed by the Respondent No.2 herein and in Crl. Revision Petition No.199 of 2005 filed by the appellant, also being aggrieved by the said common order. While Crl. Revision No.199 filed by the appellant herein challenging the framing of charges was dismissed, Crl. Revision No.165 filed by the State of Rajasthan was allowed holding that the appellant was not a juvenile and the provisions of the Juvenile Justice Act, 2000, were not, therefore, applicable to him.

5. According to the appellant's father, the appellant's date of birth is Kartik Sudi 1, Samvat Year 2039, which is equivalent to 17th October, 1982, whereas the offence was alleged to have been committed on 30th October, 1998, which mathematically indicates that at the time of commission of the offence, the appellant had completed 16 years and 13 days and was, therefore, excluded from the scope and operation of the Juvenile Justice Act, 2000. Furthermore, the medical examination conducted in respect of the appellant by a Medical Board indicated that his age at the relevant time was between 16 and 17 years. After considering the various decisions of this Court indicating the manner in which the age of a juvenile is to be determined, the High Court observed that the inescapable conclusion which could be arrived at is that on the date of the incident, the accused-appellant herein was above 16 years of age and was, therefore, not governed by the provisions of the Juvenile Justice Act, 1986 (hereinafter referred to as the '1986 Act').

6. It is the said order of the High Court which has been impugned in this appeal.

7. Appearing for the appellant, Mr. Sushil Kumar Jain, learned Advocate, submitted that the High Court had acted in a highly technical manner in holding that the appellant was not a juvenile and had in the process defeated the very object of the Juvenile Justice Act, 2000, which is aimed at rehabilitating juvenile offenders in order to bring them back to main-stream society and to give them an opportunity to rehabilitate themselves as useful citizens of the future. In fact, the definition of "juvenile" in the 1986 Act was altered in the Juvenile Justice Act, 2000, to include persons who had not completed 18 years of age. In other words, the age until which a male child in conflict with law would be treated as a juvenile was raised from 16 years to 18 years.

8. Mr. Jain submitted that the learned Single Judge of the High Court appears to have misconstrued the decisions cited before him in the case of Santenu Mitra vs. State of West Bengal, [(1998) 5 SCC 697] and Umesh Chandra vs. State of Rajasthan [(1982) 2 SCC 202], wherein the admissibility of certain records, including school records maintained by private institutions, under Section 35 of the Indian Evidence Act, 1872 was under consideration. On the other hand, Mr. Jain referred to an earlier decision of this Court in the case of Mohd. Ikram Hussain vs. State of U.P. & Ors. [1964 (5) SCR 86], where certain copies from the school registers were looked into and it was held that the same amounted to evidence under the Indian Evidence Act as the entries in the school registers were made long before the same were used by way of evidence. This Court observed that the said entries were reliable as they had been made ante litem motam. Mr. Jain also referred to certain observations made in Umesh Chandra's case (supra) while interpreting Section 35 of the Indian Evidence Act to the effect that there is no legal requirement that a public or other official book should be kept only by a public officer and all that is required is that it should be regularly kept in

discharge of official duties.

9. In support of his submissions, Mr. Jain lastly referred to the decision of this Court in the case of *Rajinder Chandra vs. State of Chhattisgarh & Anr.* [(2002) 2 SCC 287], wherein in paragraph 5 this Court observed as follows :

"5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In *Arnit Das v. State of Bihar* [(2005) 5 SCC 488] this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court squarely applies to the facts of the present case."

10. Mr. Jain emphasised that this was also a similar case in which the record, according to the date of birth indicated by his father and another witness - Narain Ram, shows that he was just 13 days older than the cut-off limit of 16 years provided in Section 2(h) of the 1986 Act.

11. Mr. Jain submitted that since the incident is alleged to have taken place as far back as on 30th October, 1998 and more than 10 years have elapsed since then and the definition of "juvenile" had since been amended to include children who had not yet attained the age of 18 years, the High Court should not have taken such a hypertechnical view and should not have interfered with the order of the Additional Sessions Judge, Didwana, declaring the appellant to be a juvenile.

12. On behalf of the respondents it was submitted that even on the basis of the age as disclosed by the appellant's father, the appellant was over 16 years of age on the date of commission of the offence and could not, therefore, be treated to be a juvenile as defined in the 1986 Act. It was submitted that the documents, which were produced in support of the appellant's claim to be a minor, show him to have crossed the age of 16 years on the date of commission of the offence and the High Court had merely corrected the error of the Additional Sessions Judge, Didwana, in calculation of the appellant's age. According to the respondents, the order of the High Court impugned in the present appeal did not call for any interference and the appeal was liable to be dismissed.

13. As indicated in the very beginning of this judgment, the Juvenile Justice Act, 2000, was enacted to deal with offences allegedly committed by juveniles on a different footing from adults, with the object of rehabilitating them. The need to treat children differently from adults in relation to commission of offences had been under the consideration of the Central Government ever since India achieved independence. With such object in mind, Parliament enacted the Juvenile Justice Act, 1986, in order to achieve the constitutional goals contemplated in Articles 15(3), 39(e) and (f), 45 and 47 of the Constitution imposing on the State a responsibility of ensuring that all the needs of

children are met and that their basic human rights are fully protected. Subsequently, in keeping with certain international Conventions and in particular the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, commonly known as the Beijing Rules, the Legislature enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 to attain the following objects :

- (i) to lay down the basic principles for administering justice to a juvenile or the child;
- (ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;
- (iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;
- (iv) to prescribe a uniform age of eighteen years for both boys and girls;
- (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;
- (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;
- (vii) to create special juvenile police units with a humane approach through sensitization and training of police personnel;
- (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;
- (ix) to minimize the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts - one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;
- (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child."

The said Act ultimately came into force on 1st April, 2001.

14. Section 2(k) of the said Act defines a juvenile or child as a person who has not completed eighteenth years of age. A broad distinction has, however, been made between juveniles in general and juveniles who are alleged to have committed offences. Section 2(l) defines "a juvenile in conflict

with law" as a juvenile who is alleged to have committed an offence. Determination of age, therefore, assumes great importance in matters brought before the Juvenile Justice Boards. In fact, Chapter II of the Juvenile Justice Act, 2000, deals exclusively with juveniles in conflict with law and provides a complete Code in regard to juveniles who are alleged to have committed offences which are otherwise punishable under the general law of crimes.

15. Section 4 of the Juvenile Justice Act, 2000, provides for constitution of Juvenile Justice Boards for every district in a State to exercise and discharge the duties conferred or imposed on such Boards in relation to juveniles in conflict with law.

16. Section 18 of the Act prohibits joint proceedings and trial of a juvenile and a person who is not a juvenile and the punishment that can be awarded to a juvenile is enumerated in Section 15.

17. Since the application of the Juvenile Justice Act, 2000, to a person brought before the Juvenile Justice Board (hereinafter referred to as 'the Board') depends on whether such person is a juvenile or not within the meaning of Section 2(k) thereof, the determination of age assumes special importance and the said responsibility has been cast on the said Board. Subsequently, after the decision of a Constitution Bench of this Court in the case of Pratap Singh vs. State of Jharkhand & Another [(2005) 3 SCC 551], the legislature amended the provisions of the Act by the Amendment Act, 2006, by substituting Section 2(l) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence"

(emphasis supplied) and to include Section 7-A which 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 order, and the sentence if any, passed by a court shall be deemed to have no effect."

(Emphasis supplied)

18. Section 7-A makes provision for a claim of juvenility to be raised before any Court at any stage, even after final disposal of a case and sets out the procedure which the Court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not. The aforesaid provisions were, however, confined to Courts, and proved inadequate as far as the Boards were concerned. Subsequently, in the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is a comprehensive guide as to how the provisions of the Juvenile Justice Act, 2000, are to be implemented, Rule 12 was introduced providing the procedure to be followed by the Courts, the Boards and the Child Welfare Committees for the purpose of determination of age in every case concerning a child or juvenile or a juvenile in conflict with law. Since the aforesaid provisions are interconnected and lay down the procedures for determination of age, the said Rule is reproduced hereinbelow:

"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 7A, 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."

Sub-Rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the Court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the Court or Board after examining and obtaining any other documentary proof referred to in Sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7A when a claim of juvenility is raised.

19. One of the problems which has frequently arisen after the enactment of the Juvenile Justice Act, 2000, is with regard to the application of the definition of "juvenile" under Section 2(k) and (l) in respect of offences alleged to have been committed prior to 1st April, 2001 when the Juvenile Justice Act, 2000 came into force, since under the 1986 Act, the upper age limit for male children to be considered as juveniles was 16 years. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 1st April, 2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him?

20. The said question, which is identical to the question raised in these proceedings, was considered in the case of Arnit Das vs. State of Bihar [(2000) 5 SCC 488], wherein, in the light of the definition of "juvenile" under the 1986 Act, which was then subsisting, this Court came to a finding that the procedures prescribed by the 1986 Act were to be adopted only when the Competent Authority found the person brought before it or appearing before it to be under 16 years of age, if a boy, and under 18 years of age, if a girl, on the date of being so brought or such appearance first before the Competent Authority. This Court also came to a finding that the date of commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of Clause

(h) of Section 2 of the 1986 Act. In the said decision, this Court sought to distinguish the earlier decisions in the case of Santenu Mitra's case (supra), Bhola Bhagat vs. State of Bihar [(1997) 8 SCC 720] and Krishna Bhagwan vs. State of Bihar [AIR 1989 Pat. 217], which was a Full Bench decision. It also over-ruled the decision of the Calcutta High Court in Dilip Saha vs. State of W.B. [AIR 1978 Cal. 529], where the Calcutta High Court, while interpreting the provisions of the West Bengal Children's Act, 1959, which is a *pari materia* enactment, took the view that the age of the accused at the time of commission of the offence is the relevant age for attracting the provisions of the said Act and not his age at the time of trial.

21. The question which fell for decision in Arnit Das's case (supra), once again fell for the consideration of this Court in the case of Pratap Singh's case (supra), where the decision of this Court in Umesh Chandra's case (supra), which expressed a view which was contrary to that expressed in Arnit Das's case (supra), was brought to the notice of the Court, which referred the matter to the Constitution Bench to settle the divergence of views. In fact, the Constitution Bench formulated two points for decision, namely,

(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?

(b) Whether the Act of 2000 will be applicable in a case where a proceeding is initiated under the 1986 Act and was pending when the Act of 2000 was enforced with effect from 1.4.2001?

22. While considering the first question, the Constitution Bench had occasion to consider the decision of the three Judge Bench in Umesh Chandra's case (supra), wherein it was held that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of occurrence and not the date of trial. Consequently, the decision in Arnit Das's case (supra) was over-ruled and the view taken in Umesh Chandra's case (supra) was declared to be the correct law. On the second point, after considering the provisions of Sections 3 and 20 of the Juvenile Justice Act, 2000, along with the definition of "juvenile" in Section 2(k) of the Juvenile Justice Act, 2000, as contrasted with the definition of a male juvenile in Section 2(h) of the 1986 Act, the majority view was that the 2000 Act would be applicable to a proceeding in any Court/Authority initiated under the 1986 Act which is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001. In other words, a male offender, who was being proceeded with in any Court/Authority initiated under the 1986 Act and had not completed the age of 18 years on 1.4.2001, would be governed by the provisions of Juvenile Justice

Act, 2000.

23. In his concurring judgment, S.B. Sinha, J., while considering the provisions of Section 20 of the Juvenile Justice Act, 2000, observed that for the purpose of attracting Section 20 it had to be established that (i) on the date of coming into force the proceedings in which the petitioner was accused was pending; and (ii) on that day he was below the age of 18 years. The unanimous view of the Constitution Bench was that the provisions of the Juvenile Justice Act, 2000, have prospective effect and not retrospective effect, except to cover cases where though the male offender was above 16 years of age at the time of commission of the offence, he was below 18 years of age as on 1.4.2001. Consequently, the said Act would cover earlier cases only where a person had not completed the age of 18 years on the date of its commencement and not otherwise.

24. The said decision in Pratap Singh's case (supra) led to the substitution of Section 2(l) and the introduction of Section 7A of the Act and the subsequent introduction of Rule 12 in the Juvenile Justice Rules, 2007, and the amendment of Section 20 of the Act.

25. Read with Sections 2(k), 2(l), 7A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the Section most relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1st April, 2001, when the Juvenile Justice Act, 2000, came into force. The same is, accordingly, reproduced hereinbelow :

"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 (1) 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.]"

26. The Proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1st April, 2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved. 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 1st April, 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.

27. At this point it may be noted that the decision of the Constitution Bench in Pratap Singh's case (supra) was rendered at a point of time when the amendments to Sections 2(l) and 20 and the introduction of Section 7-A had not yet been effected, nor was Rule 12 of the 2007 Rules available. Several decisions on the applicability of the 2000 Act to children who were above 16 but below 18 years on the date of commission of the offence have been rendered after the Juvenile Justice Act, 2000, came into force and several others were rendered after the amendments were introduced in the said Act by Amendment Act 33 of 2006 and the introduction of the 2007 Rules. The decisions rendered by this Court and the High Courts prior to 1st April, 2001, when the Juvenile Justice Act, 2000, came into force and thereafter can, therefore, be divided into two groups. The decision in Pratap Singh's case (supra) and in the case of Munney @ Rahat Jan Khan vs. State of U.P. [(2006) 12 SCC 697] fall into the first category, whereas the decisions in Jameel vs. State of Maharashtra [(2007) 11 SCC 420], Vimal Chadha vs. Vikas Chaudhary [(2008) 8 SCALE 608], Babloo Pasi vs. State of Jharkhand [(2008) 13 SCALE 137] and Ranjit Singh vs. State of Haryana [(2008) 9 SCC 453] fall into the second category. Although, the Constitution Bench decision in Pratap Singh's case (supra) and Munney's case (supra) are not really relevant since they have been rendered prior to 22nd August, 2006, when the Amending Act 33 of 2006 came into force, they assume a modicum of significance since they have been referred to and relied upon even after the Amending Act and the 2007 Rules came into force on 22.8.2006 and 26.10.2007, respectively.

28. Of the decisions rendered after the amendments effected in 2006 to the Juvenile Justice Act, 2000, the first decision of note is that of Jameel's case (supra) rendered on 16.1.2007 wherein the amendments to the Act effected by the Amendment Act 33 of 2006, which came into effect on 22.8.2006, were not even noticed. The next decision rendered on 27.5.2008 is in the case of Vimal Chadha's case (supra), wherein, although, the amendment of the Act and the introduction of the Juvenile Justice Rules, 2007, were brought to the notice of the Court, the same were not considered and the decision was rendered in the light of the decision rendered in Pratap Singh's case (supra) and other cases decided prior to 1.4.2001.

29. The next decision rendered on the same point on 11.9.2008 was the decision in Ranjit Singh's case (supra) wherein also the amendments to Section 2(l) and 20 and the introduction of Section

7-A in the Juvenile Justice Act, 2000, and the introduction of the 2007 Rules had not been considered and the decision passed sub silentio.

30. Similar was the situation in Babloo Pasi's case (supra) decided on 3.10.2008 which basically dealt with Section 49 of the Juvenile Justice Act, 2000 and Rule 22 of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003, which is *pari materia* with Rule 12 of the 2007 Rules. While deciding the said case, the Hon'ble Judges did not also have occasion to consider the amendments effected to the Juvenile Justice Act, 2000, by the Amendment Act 33 of 2006 which had just come into force on 22.8.2006.

31. None of the aforesaid decisions are of much assistance in deciding the question with regard to the applicability of the definition of "Juvenile" in Section 2(k) and 2(l) of the Juvenile Justice Act, 2000, as amended in 2006, whereby the provisions of the said Act were extended to cover juveniles who had not completed 18 years of age on or before the coming into force of the Juvenile Justice Act, 2000 on 1.4.2001 (Emphasis supplied). 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 recognized 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 Section 2(k) and 2(l) of the Act even if the Juvenile had ceased to be so on or before(emphasis supplied) the date of commencement of the Act. 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 clause 2(l) even if the juvenile ceases to be so "on or before the date of commencement of this Act" (emphasis supplied) 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.

32. Apart from the aforesaid provisions of the 2000 Act, as amended, and the Juvenile Justice 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.

33. In addition to the above, Section 49 of the Juvenile Justice Act, 2000 is also of relevance and is reproduced hereinbelow :

"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."

34. Sub-Section (1) of Section 49 vests the Competent Authority with 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 whether the person is a juvenile or a child or not, stating his age as nearly as may be. Sub-Section (2) 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. 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;

35. Sub-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.

36. 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.

37. Of the two main questions decided in Pratap Singh's case (supra), 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. The law as now crystallized on a conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1st April, 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.

38. The instant case is covered by the amended provisions of Sections 2(k), 2(l), 7A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case. Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the introduction of the Juvenile Justice Rules, 2007. Even otherwise, the matter was covered by the decision of this Court in the case of Rajinder Chandra's case (supra), wherein this Court, inter alia, held that when a claim of juvenility is raised and on the evidence available two views are possible, the Court should lean in favour of holding the offender to be a juvenile in borderline cases. In any event, the statutory provisions have been altered since then and we are now required to consider the question of the claim of the appellant that his date of birth was Kartik Sudi 1, Samvat Year 2039, though no basis has been provided for the fixation of the said date itself in the light of the amended provisions. Often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which may have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12, but such an exercise is not required to be undertaken in the present case since even according to the determination of the appellant's age by the High Court the appellant was below eighteen years of age when the offence was alleged to have been committed.

39. Having regard to the views expressed hereinabove, we are unable to sustain the impugned order of the High Court in holding that the provisions of the Juvenile Justice Act, 1986, would not be applicable to the appellant's case since he was allegedly 13 days above the age prescribed.

40. In the instant case, the appellant was arrested on 30.11.1998 when the 1986 Act was in force and under Clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect. However, as indicated hereinbefore after the decision in Pratap Singh's case (supra), Section 2(l) was amended to define a juvenile in conflict with law to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence; Section 7A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000. Section 7A of the Juvenile Justice Act, 2000, made provision for the

claim of juvenility to be raised before any Court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

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

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

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

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

45. The matter is accordingly remitted to the Juvenile Justice Board, Ajmer, for disposal in accordance with law, within three months from the date of receipt of a copy of this order, having regard to the fact that the offence is alleged to have been committed more than ten years ago. If, however, the appellant has been in detention for a period which is more than the maximum period for which a juvenile may be confined to a Special Home, the Board shall release the appellant from custody forthwith.

_____. J.

(ALTAMAS KABIR) _____ J.

(CYRIAC JOSEPH) New Delhi Dated: 05.05.2009