Jitendra Singh @ Babboo Singh & Anr vs State Of U.P on 10 July, 2013

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Bench: T.S. Thakur, Madan B. Lokur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 763 OF 2003

Jitendra Singh @ Babboo Singh & Anr. ... Appellants

Versus

State of U.P. ... Respondent

J U D G M E N T

Madan B. Lokur, J.

1. Three principal issues arise for consideration in this appeal. The first is whether the appellant was a juvenile or a child as defined by Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of occurrence of the offence he was charged with. On a consideration of the Report called for by this Court on this question, the issue must be answered in the affirmative.

2. The second is whether the conviction of the appellant can be sustained on merits and, if so, the sentence to be awarded to the appellant. In our opinion the conviction of the appellant must be upheld and on the quantum of sentence, he ought to be dealt with in accordance with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Section 15 thereof.

3. The third question is whether any appropriate measures can be taken to prevent the recurrence of a situation, such as the present, where an accused is subjected to a trial by a regular Court having criminal jurisdiction but he or she is later found to be a juvenile. In this regard, we propose to give appropriate directions to all Magistrates which, we hope, will prevent such a situation from arising again. The facts:

4. On the midnight of 23rd / 24th May 1988 it is alleged that Asha Devi was set on fire by the appellants and two other persons. A demand for dowry, which she was unable to meet, resulted in the unfortunate incident.

5. On 24th May 1988 at about 5 a.m., Asha Devi's uncle came to know of the incident and he lodged a complaint with the local police. In the meanwhile, Asha Devi had been taken to the District Hospital where she succumbed to the burns.

6. After completing the investigation, the local police filed a charge sheet on 10th July 1988 against the appellants and two other persons. The charge sheet alleged offences committed under Section 147, Section 302, Section 304-B and Section 498-A of the Indian Penal Code (for short the 'IPC').

7. Thereafter the case proceeded to trial and the Sessions Judge, Rae Bareli in S.T. No. 186 of 1988 delivered judgment on 30th August 1990 convicting the appellants and acquitting the other two persons. The appellants were convicted under Section 304-B of the IPC (dowry death) and sentenced to undergo 7 years rigorous imprisonment. They were also convicted under Section 498-A of the IPC (husband or relative of husband of a woman subjecting her to cruelty) and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.100/- each.

8. Feeling aggrieved by their conviction and sentence, the appellants preferred Criminal Appeal No. 464 of 1990 in the Lucknow Bench of the Allahabad High Court. By its judgment and order dated 23rd May 2003 the High Court dismissed the Criminal Appeal. This is reported as 2003 (3) ACR 2431=MANU/UP/2115/2003.

9. Against the judgment and order passed by the Allahabad High Court the appellants came up in appeal to this Court. It may be mentioned that during the pendency of this appeal the second appellant (father of the first appellant) died and therefore only the appeal filed by the first appellant, the husband of Asha Devi, survives.

10. During the pendency of these proceedings the appellant filed Criminal Miscellaneous Petition No. 16974 of 2010 for raising additional grounds. He sought to contend that on the date of commission of the offence, he was a juvenile or child within the meaning of that expression as defined in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act'). According to the appellant his date of birth was 31st August 1974 and therefore, when the offence is alleged to have been committed, he was about 14 years of age.

11. The application for urging additional grounds was considered by this Court and by an order dated 19th November 2010 it was held, while relying upon Pawan v. State of Uttaranchal, (2009) 15 SCC 259 that prima facie there was material which necessitated an inquiry into the claim of the appellant that he was a juvenile at the time of commission of the offence. Accordingly, the following direction was given:

> "In the result we allow the appellant to urge the additional ground regarding juvenility of the appellant on the date of the commission of the offence and direct the Trial Court to hold an enquiry into the said question and submit a report as expeditiously as possible, but not later than four months from today. We make it clear that the Trial Court shall be free to summon the concerned School, Panchayat or the Electoral office record or any other record from any other source which it considers necessary for a proper determination of the age of the appellant. We also make it clear that in addition to the above, the Trial Court shall be free to constitute a Medical Board comprising at least three experts on the subject for determination of the age of the appellant, based on medical tests and examination." Report of the Additional Sessions Judge:

12. The Additional Sessions Judge, Rae Bareli acted on the order dated 19th November 2010 and registered the proceedings as Miscellaneous Case No. 1 of 2010. He then submitted his Report dated 18th February 2011 in which he accepted the claim of the appellant that his date of birth was 31st August 1974. As such, the appellant was a juvenile on the date of commission of the offence.

13. For the purposes of preparing his Report, the Additional Sessions Judge examined several witnesses including A.P.W. 1 Samar Bahadur Singh, Principal, Pre-Middle School, Sohai Bagh who produced the school admission register pertaining to the admission of the appellant in the school. The register showed the date of birth of the appellant as 31st August 1974 and the Additional Sessions Judge found that the register had not been tampered with.

14. The Additional Sessions Judge also examined A.P.W. 11 Dr. Birbal who was a member of the Medical Board constituted by him. The Medical Board examined the appellant on 24th December 2010 and gave his age as about 40 years. Reference in this context was also made to an ossification test conducted on the appellant while he was in judicial custody in the District Jail in Rae Bareli during investigation of the case. The ossification test was conducted on 8th July 1988 and that determined the appellant's age as about 17 years.

15. At this stage, it may be mentioned that on the basis of the ossification test the appellant had applied for bail before the Additional Sessions Judge in Rae Bareli being Bail Application No. 435 of 1988. The Additional Sessions Judge noted that while the age of the appellant was determined at about 17 years by the Chief Medical Officer, there could be a difference of about 2 years either way and therefore by an order dated 13th July 1988 the application for bail was rejected.

16. The appellant then moved the Lucknow Bench of the Allahabad High Court by filing a bail application which was registered as Criminal Miscellaneous Case No. 1859(B) of 1988. By an order

dated 25th November 1988 the Allahabad High Court granted bail to the appellant while holding, inter alia, that it was difficult to discard the opinion of the Chief Medical Officer regarding the appellant's age.

17. Coming back to the Report, the Additional Sessions Judge also examined A.P.W. 5 Pankulata the younger sister of deceased Asha Devi. She stated that Asha Devi was about 4 or 5 years older than the appellant and that it was not unknown, apparently in their community, for the wife to be older than the husband. The record of the case shows that Asha Devi died at the age of about 19 after having been married for about 4½ years. This would mean that the appellant was married to Asha Devi when he was about 9 years old and that on the date of the incident he was about 14 years old.

18. The Additional Sessions Judge also examined A.P.W. 8 Sanoj Singh, husband of Pankulata, who gave a statement in tune with that of his wife. The Additional Sessions Judge also examined A.P.W. 9 Narendra Bahadur Singh husband of A.P.W. 10 Kanti Singh. All these witnesses stated to the effect that apparently in their community the wife is normally older than the husband at the time of marriage. All these persons also produced proof of their age to show that the wife (A.P.W. 5 Pankulata and A.P.W. 10 Kanti Singh) was older than her husband at the time of their marriage.

19. On the basis of the material before him, the Additional Sessions Judge accepted the claim of the appellant that he was younger than his wife at the time of marriage and that his date of birth was 31st August 1974.

20. Objections have been filed to this Report by the State of Uttar Pradesh, but the only objection taken is that the documents pertaining to the education of the appellant were produced after a great delay and not immediately. It was also submitted that it is improbable that a girl of about 15 years of age would get married to a boy of about 9 years of age.

21. The Report given by the Additional Sessions Judge has been examined with the assistance of learned counsel and there is no reason to reject it. While the circumstances are rather unusual, the fact remains that there is documentary evidence to show from the school admission register (which has not been tampered with) that the date of birth of the appellant is 31st August 1974. That apart, the medical examination of the appellant conducted on 8th July 1988 less than two months after the incident, also shows his age to be about 17 years. This was not doubted by the Additional Session Judge while rejecting the bail application of the appellant and was also not doubted by the Allahabad High Court while granting bail to him. Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act.

Should the conviction be upheld:

22. The next question that arises is whether the conviction of the appellant is justified or not. Before examining the evidence on record, it is necessary to mention that both the Trial Court as well as the

High Court have concurrently found that the appellants had demanded dowry from Asha Devi and that she had been set on fire for not having complied with the demands for dowry.

23. Section 304-B of the IPC which is the more serious offence for which the appellant has been found guilty, reads as follows:

> "304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

24. A plain reading of this section, which explains a dowry death, makes it clear that its ingredients are (a) the death of a woman is caused by burns or a bodily injury or that it occurs otherwise than under normal circumstances; (b) the death takes place within seven years of her marriage; (c) the woman was subjected, soon before her death, to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

25. In the present case, both the Trial Court and the High Court have found that Asha Devi had died of burn injuries as per the medical evidence; she had been set on fire on the midnight of 23/24 May 1988 and taken to the hospital at about 4 a.m. on 24th May 1988 where she succumbed to the burn injuries at about 5.30 a.m.; she had been married to the appellant for about 4½ years before her death; and that the evidence of PW-1 Ram Bahadur (uncle of Asha Devi) and PW-3 Tej Bahadur Singh (father of Asha Devi) disclosed that demands were being made by the appellants for dowry soon before her death. Apart from cash, a demand was made by the in-laws of Asha Devi for a gold chain and a horse. Since the demands were not complied with, Asha Devi was frequently beaten and harassed. She had brought this to the notice of her uncle as well as her father. In fact, before her demise, she had written a letter to her father about the beating and harassment given to her due to the inability to meet the dowry demands. The letter was proved by the prosecution and was relied on by the Trial Court as well as the High Court in accepting the version of the prosecution. Clearly, therefore, the ingredients of Section 304-B of the IPC were made out.

26. However, the case put up by the appellant was that Asha Devi had accidentally caught fire while she was cooking and therefore it was a case of accidental death. This was not accepted by both the Trial Court as well as the High Court since there was no explanation given for the delay of about 4 hours in taking Asha Devi to the hospital if the case was really one of accidental death. Moreover,

there was nothing to suggest that the appellant or anyone in the family had made any attempt to extinguish the fire.

27. There is no doubt, on the basis of the facts found by the Trial Court as well as the High Court from the evidence on record that a case of causing a dowry death had convincingly been made out against the appellant. There is no apparent reason to disturb the concurrent findings of fact arrived at by the Trial Court and the High Court and so the conviction of the appellant must be upheld.

Sentence to be awarded:

28. On the sentence to be awarded to a convict who was a juvenile when he committed the offence, there is a dichotomy of views.

29. In the first category of cases, the conviction of the juvenile was upheld but the sentence quashed. In Jayendra v. State of Uttar Pradesh, (1981) 4 SCC 149 the conviction of the appellant was confirmed though he was held to be a child as defined in Section 2(4) of the Uttar Pradesh Children Act, 1951. However, he was not sent to an 'approved school' since he was 23 years old by that time. His sentence was quashed and he was directed to be released forthwith.

30. Similarly, in Bhoop Ram v. State of U.P. (1989) 3 SCC 1 this Court followed Jayendra and while upholding the conviction of the appellant who was 28 years old by that time, the sentence awarded to him was quashed.

31. In Pradeep Kumar v. State of U.P., 1995 Supp (4) SCC 419 yet another case under the Uttar Pradesh Children Act, 1951 the conviction of the appellant was upheld but since he was 30 years old by that time, his sentence was set aside.

32. In Bhola Bhagat and other v. State of Bihar, (1997) 8 SCC 720 the conviction of the appellant was upheld by this Court but the sentence was quashed keeping in mind the provisions of the Bihar Children Act, 1970 read with the Bihar Children Act, 1982 and the Juvenile Justice Act, 1986.

33. In Upendra Kumar v. State of Bihar, (2005) 3 SCC 592 this Court followed Bhola Bhagat and upheld the conviction of the appellant but quashed the sentence awarded to him.

34. In Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615 one of the appellants was a juvenile within the meaning of that expression occurring in Section 2(h) of the Juvenile Justice Act, 1986. This Court held that if the accused was a juvenile on the date of occurrence and continues to be so, then in that event he would have to be sentenced to a juvenile home. However, if on the date of sentence, the accused is no longer a juvenile, the sentence imposed on him would be liable to be set aside. In this context, reference was made to Bhoop Ram.

35. Finally in Vijay Singh v. State of Delhi, (2012) 8 SCC 763 the conviction of the appellant was upheld but the sentence was quashed since he was about 30 years old by that time.

36. The second category of cases includes Satish @ Dhanna v. State of Madhya Pradesh, (2009) 14 SCC 187 wherein the conviction of the appellant was upheld but the sentence awarded was modified to the period of detention already undergone. Similarly, in Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 the conviction of the appellant was sustained but since the convict had undergone two years and four months of incarceration, the sentence awarded to him was quashed.

37. The third category of cases includes Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 wherein the appellant was held to be a juvenile on the date of commission of the offence. His appeal against his conviction was allowed and the entire case remitted to the Juvenile Justice Board for disposal in accordance with law.

38. In Daya Nand v. State of Haryana, (2011) 2 SCC 224 this Court followed Hari Ram and directed the appellant to be produced before the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

39. The fourth category of cases includes Ashwani Kumar Saxena v. State of Madhya Pradesh, (2012) 9 SCC 750 in which the conviction of the appellant was upheld and the records were directed to be placed before the Juvenile Justice Board for awarding suitable punishment to the appellant.

40. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

41. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This reads as follows:

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

> Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.
>
> Explanation.-In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

42. It is clear that the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena should be followed.

43. In the present case, the offence was committed by the appellant when the Juvenile Justice Act, 1986 was in force. Therefore, only the 'punishments' not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him. This is the requirement of Article 20(1) of the Constitution. The 'punishments' provided under the Juvenile Justice Act, 1986 are given in Section 21 thereof and they read as follows:

> "21. Orders that may be passed regarding delinquent juveniles.—(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit,—
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> (a) allow the juvenile to go home after advice or admonition;
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> (b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

Juvenile Justice Act, 1986

(c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home,—

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile, for the period until he ceases to be a juvenile:

Provided that xxx xxx xxx.

Provided further that xxx xxx xxx;

(e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b), clause (c) or clause (e) of sub-

section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

Provided that xxx xxx xxx.

(3) xxx xxx xxx.

(4) xxx xxx xxx."

44. 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 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.

45. While dealing with the case of the appellant under the IPC, the fine imposed upon him is only Rs.100/-. This is ex facie inadequate punishment considering the fact that Asha Devi suffered a dowry death.

46. Recently, one of us (T.S. Thakur, J.) had occasion to deal with the issue of compensation to the victim of a crime. An illuminating and detailed discussion in this regard is to be found in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778. Following the view taken therein read

with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi. Avoiding a recurrence:

47. How can a situation such as the one that has arisen in this case (and in several others in the past) be avoided? We need to only appreciate and understand a few provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act) and the Model Rules framed by the Government of India called the Juvenile Justice (Care and Protection of Children) Rules, 2007 (the Rules).

48. The preamble to the Act draws attention to the Convention on the Rights of the Child which was ratified by the Government of India on 11th December 1992. The Convention has prescribed, inter alia, a set of standards to be adhered to in securing the best interests of the child. For the present purposes, it is not necessary to detail those standards. However, keeping this in mind, several special procedures, over and above or despite the Criminal Procedure Code (for short the Code) have been laid down for the benefit of a juvenile or a child in conflict with law. These special procedures are to be found both in the Act as well as in the Rules. Some (and only some) of them are indicated below.

49. A Juvenile Justice Board is constituted under Section 6 of the Act to deal exclusively with all proceedings in respect of a juvenile in conflict with law. When a juvenile charged with an offence is produced before a Juvenile Justice Board, it is required to hold an inquiry (not a trial) and pass such orders as it deems fit in connection with the juvenile (Section 14 of the Act).

50. A juvenile or a child in conflict with law cannot be kept in jail but may be temporarily received in an Observation Home during the pendency of any inquiry against him (Section 8 of the Act). If the result of the inquiry is against him, the said juvenile may be received for reception and rehabilitation in a Special Home (Section 9 of the Act). The maximum period for reception and rehabilitation in a Special Home is three years (Section 15 of the Act). Even this, in terms of Article 37 of the Convention on the Rights of the Child, shall be a measure of last resort.

51. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

52. Orders that may be passed by a Juvenile Justice Board against a juvenile, if it is satisfied that he has committed an offence, are mentioned in Section 15 of the Act. One of the orders that may be passed, as mentioned above, is for his reception and rehabilitation in a Special Home for a period of three years, as a measure of last resort.

53. The Rules, particularly Rule 3, provide, inter alia, that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. What this means is that "the traditional objectives of criminal justice, that is retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice". The right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed. Following the requirements of the Convention on the Rights of the Child, Rule 3 provides that institutionalization of a child or a juvenile in conflict with law shall be the last resort after a reasonable inquiry and that too for the minimum possible duration. Rule 32 provides that:

> "The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort."

54. It is quite clear from the above that the purpose of the Act is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the Act has been in its avowed purpose in this respect.

55. As regards procedurally dealing with a juvenile in conflict with law, the Rules require the concerned State Government to set up in every District a Special Juvenile Police Unit to handle the cases of juveniles or children in terms of the provisions of the Act (Rule 84). This Unit shall consist of a juvenile or child welfare officer of the rank of Police Inspector having an aptitude and appropriate training and orientation to handle such cases. He will be assisted by two paid social workers having experience of working in the field of child welfare of which one of them shall be a woman.

56. Rule 75 of the Rules requires that while dealing with a juvenile or a child, except at the time of arrest, a police officer shall wear plain clothes and not his uniform.

57. The Act and the Model Rules clearly constitute an independent code for issues concerning a child or a juvenile, particularly a juvenile in conflict with law. This code is intended to safeguard the rights of the child and a juvenile in conflict with law and to put him in a category separate and distinct from an adult accused of a crime.

58. Keeping in mind all these standards and safeguards required to be met as per our international obligations, it becomes obligatory for every Magistrate before whom an accused is produced to ascertain, in the first instance or as soon thereafter as may be possible, whether the accused person is an adult or a juvenile in conflict with law. The reason for this, obviously, is to avoid a two-fold difficulty: first, to avoid a juvenile being subjected to procedures under the normal criminal law and de hors the Act and the Rules, and second, a resultant situation, where the "trial" of the juvenile is required to be set aside and quashed as having been conducted by a court not having jurisdiction to

do so or a juvenile, on being found guilty, going 'unpunished'. This is necessary not only in the best interests of the juvenile but also for the better administration of criminal justice so that the Magistrate or the Sessions Judge (as the case may be) does not waste his time and energy on a "trial".

59. It must be appreciated by every Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility, on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult under- trial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production.

60. It must also be appreciated that due to his juvenility, a juvenile in conflict with law may be presumed not to know or understand the legal procedures making it difficult for him to put forth his claim for juvenility when he is produced before a Magistrate. Added to this are the factors of poor education and poor economic set up that are jointly the main attributes of a juvenile in conflict with law, making it difficult for him to negotiate the legal procedures. We say this on the strength of studies conducted, and which have been referred to by one of us (T.S. Thakur, J) in Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489. It is worth repeating what has been said:

> "Studies conducted by National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6,122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his Book 'Juvenile Delinquency and Justice System', in which the author states as follows:
>
> "One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity."

61. Such being the position, it is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him. We are of the view that this may be a satisfactory way of avoiding the recurrence of a situation such as the one dealt with.

62. We may add that our international obligations as laid down in the Convention on the Rights of the Child and the Beijing Rules require the involvement of the parents or legal guardians in the legal process concerning a juvenile in conflict with law. For example, a reference may be made to Article 40 of the Convention and Principles 7, 10 and 15 of the Beijing Rules. That this is not unusual is clear from the fact that in civil disputes, our domestic law requires a minor to be represented by a guardian.

The remedy:

63. In D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 this Court laid down some important requirements for being adhered to by the police "in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures". The Criminal Procedure Code has since been amended and some of the important requirements laid down by this Court have been given statutory recognition. These are equally applicable, mutatis mutandis, to a child or a juvenile in conflict with law.

64. Attention may be drawn to Section 41-B of the Code which requires a police officer making an arrest to prepare a memorandum of arrest which shall be attested by at least one witness who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. The police officer is also mandated to inform the arrested person, if the memorandum of arrest is not attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. Section 41-B of the Code reads as follows:

> "41-B. Procedure of arrest and duties of officer making arrest.— Every police officer while making an arrest shall—
>
> (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;
>
> (b) prepare a memorandum of arrest which shall be—
>
> (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
>
> (ii) countersigned by the person arrested; and

> (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest."

65. Every police officer making an arrest is also obliged to inform the arrested person of his rights including the full particulars of the offence for which he has been arrested or other grounds for such arrest (Section 50 of the Code), the right to a counsel of his choice and the right that the police inform his friend, relative or such other person of the arrest. Section 50-A of the Code is relevant in this regard and it reads as follows:

> "50-A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.
>
> (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station. (3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.
>
> (4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-

section (2) and sub-section (3) have been complied with in respect of such arrested person."

66. When any person is arrested, it is obligatory for the arresting authority to ensure that he is got examined by a medical officer in the service of the Central or the State Government or by a registered medical practitioner. The medical officer or registered medical practitioner is mandated to prepare a record of such examination including any injury or mark of violence on the person arrested. Section 54 of the Code reads as follows:

> "54. Examination of arrested person by medical officer.—(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:
>
> Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner. (2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein

any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person."

67. In our opinion, the procedures laid down in the Code, in as much as they are for the benefit of a juvenile or a child, apply with full rigour to an apprehension made of a juvenile in conflict with law under Section 10 of the Act. If these procedures are followed, the probability of a juvenile, on apprehension, being shown as an adult and sent to judicial custody in a jail, will be considerably minimized. If these procedures are followed, as they should be, along with the requirement of a Magistrate to examine the juvenility or otherwise of an accused person brought before him, subjecting a juvenile in conflict with law to a trial by a regular Court may become a thing of the past.

Conclusion:

68. The appellant was a juvenile on the date of the occurrence of the incident. His case has been examined on merits and his conviction is upheld. The only possible and realistic sentence that can be awarded to him is the imposition of a fine. The existing fine of Rs.100/- is grossly inadequate. To this extent, the punishment awarded to the appellant is set aside. The issue of the quantum of fine to be imposed on the appellant is remitted to the jurisdictional Juvenile Justice Board. The jurisdictional Juvenile Justice Board is also enjoined to examine the compensation to be awarded, if any, to the family of Asha Devi in terms of the decision of this Court in Ankush Shivaji Gaikwad.

69. Keeping in mind our domestic law and our international obligations, it is directed that the provisions of the Criminal Procedure Code relating to arrest and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 being the law of the land, should be scrupulously followed by the concerned authorities in respect of juveniles in conflict with law.

70. It is also directed that whenever an accused, who physically appears to be a juvenile, is produced before a Magistrate, he or she should form a prima facie opinion on the juvenility of the accused and record it. If any doubt persists, the Magistrate should conduct an age inquiry as required by Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine the juvenility or otherwise of the accused person. In this regard, it is better to err on the side of caution in the first instance rather than have the entire proceedings reopened or vitiated at a subsequent stage or a guilty person go unpunished only because he or she is found to be a juvenile on the date of occurrence of the incident.

71. Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi. Of course, in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the appellant has undergone some period of incarceration.

72. The appeal is partly allowed with the directions given above.

.....J. (T.S. Thakur) .....J. (Madan B. Lokur) New Delhi;

July 10, 2013 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.763 OF 2003 Jitendra Singh @ Babboo Singh & Anr. ...Appellants Versus State of U.P. ...Respondent J U D G M E N T T.S. Thakur, J.

1. I have had the advantage of going through the Judgment and Order proposed by my Esteemed Brother Madan B. Lokur, J. The draft judgment formulates three issues for determination and answers them with remarkable lucidity. While I agree with the view taken by Brother Lokur, J. that the appellant was a juvenile on the date of the commission of the offence within the meaning of Section 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short , the "2000 Act") and that his conviction ought to be upheld, I wish to add a few words of my own in support of that view. As regards issue of general directions for guidance of the Courts below, I do not have any serious conceptual or other disagreement with what has been proposed by my erudite Brother, for the proposed directions will promote the objects underlying the 2000 Act, and prevent anomalous situations in which juveniles in conflict with law may stand to get prejudiced because of their economic and other handicaps/ because of proverbial law's delay.

2. The facts have been succinctly summarised in the draft judgment of Brother Lokur, J. which do not bear repetition except to the extent the same is absolutely necessary to elucidate the narrative in which the issues arise for our consideration. The appellant was, together with three others, tried for offences punishable under Sections 302, 304-B and 498-A of the IPC by the Sessions Judge, Rae Bareli, who by her judgment dated 30th August, 1990 convicted him and his father Lal Bahadur Singh (since deceased) under Section 304-B and sentenced both of them to undergo rigorous imprisonment for a period of seven years. They were also convicted under Section 498-A of the IPC and sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.200/- each. The prosecution case against the appellant and his co-accused was that they set on fire Asha Devi, who was none other than the wife of the appellant, on the night intervening 23rd and 24th May, 1988. The motive for the commission of the offence was the alleged failure of the deceased Asha Devi and her parents to satisfy the appellant's demand for dowry.

3. Aggrieved by their conviction and sentence the appellant and his co- accused filed Criminal Appeal No.464 of 1990, which failed and was dismissed by the High Court in terms of the order impugned in this appeal. Demise of the second appellant during the pendency of the present appeal

abated the proceedings qua him, leaving the appellant to pursue the challenge mounted against the judgments and orders passed by the Courts below, by himself.

4. Seven years after the filing of the present appeal, the appellant for the first time filed Crl. Misc. Petition No.16974 of 2010 for permission to urge an additional ground to the effect that the appellant was on the date of the commission of the offence a juvenile within the meaning of Section 2 (k) of the 2000, Act. It was urged on the basis of a school certificate that the petitioner was on the date of commission of the offence hardly 14 years of age, and hence a juvenile entitled to the protection of the Act aforementioned. By an order dated 19th November, 2010, this Court allowed the Criminal Miscellaneous Petition, permitted the appellant to raise the additional plea and directed an inquiry into the claim of juvenility of the appellant by the Trial Court.

5. The Trial Court accordingly conducted an inquiry, examined the relevant school record and, based on the entirety of the evidence including the medical evidence adduced in the course of the inquiry, held that according to the school certificate the age of the appellant on the date of the incident in question was around 13 years 8 months on the date of the incident. In doing so the trial Court gave credence to the school certificate in preference to the medical examination and other equally compelling records touching upon the age of the appellant like the Family Register maintained by the Panchayat and the Electoral rolls according to which the appellant's age was above 16 years and below 17 ½ years on the date of the occurrence. Although the respondent has objected to the finding of the Trial Court and the assessment of the age as on the date of the commission of the offence, I am inclined to go along with Lokur, J's finding as to age of the appellant when His Lordship says:

> ".....Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act."

6. I may, independent of the conclusion drawn by my esteemed brother, briefly state my reasons for holding that the appellant was above sixteen years as on the date of the commission of the offence, no matter the enquiry report submitted by the Trial Court has held him to be less than 16 years on that date. But before I do so, it is important to mention that the question whether the appellant was less or more than 16 is important not because the benefit of the 2000 Act depends on that question, but because the answer to that question has a bearing on whether the conviction of the appellant was itself illegal, hence liable to be set aside. I say so because, the benefit of the 2000 Act, would be in any case available to the appellant, so long as he was less than 18 years of age on the crucial date, and it is nobody's case that he was above that age on that date. The decision of this Court in Hari Ram v. State of Rajasthan (2009) 13 SCC 211 authoritatively settles the legal position in that regard when it says:

> "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."

7. Equally important is the fact that the jurisdiction of the Court to try the appellant, as indeed any other person accused of commission of an offence would have to be determined by reference to the legal position that prevailed as on the date the Court tried, convicted and sentenced the appellant. It is common ground that as on the date of the commission of the offence and right up to the date the trial Court convicted and sentenced the appellant to imprisonment, the provisions of Juvenile Justice Act, 1986 (in short, the "1986 Act") held the field. Apart from the fact that the upper age limit for claiming juvenility was 16 years for boys, the question whether a person was or was not a juvenile could be decided by the Court on the basis of documentary or medical evidence or on a fair assessment of both of them. That is because, the provisions of 1986 Act, did not, prioritise the basis on which such determination could be made. It was left for the accused to produce evidence or the Court to direct a medical examination for determining his age. The weightage which the Rules framed under the 2000 Act provide and the order of preference settled for purposes of placing reliance upon evidence coming from different sources were not in vogue while the 1986 Act held the field. The result was that the Court was free to determine the question on the basis of one such piece of evidence or on a cumulative effect and on such evidence that may have been produced before it. It is necessary to bear in mind this dichotomy in the legal framework while determining whether the trial Court had committed an error of jurisdiction in holding the appellant to be not a juvenile and hence triable by it.

8. The question whether the appellant was a juvenile was first raised before the trial Court at a very early stage of the case. The appellant had prayed for bail on that basis, which appears to have led the Court to direct assessment of his age on the basis of a medical examination. The medical examination, however, determined the age of the appellant to be 17 years, which took him beyond the upper age of juvenility under the 1986 Act. What is noteworthy is that no attempt was made by the appellant to adduce any evidence to support his claim of being a juvenile nor was any documentary evidence in the form of school certificate or otherwise adduced. As a matter of fact the chapter was totally forgotten, and the trial allowed to proceed to its logical conclusion without the appellant raising his little finger against the competence of the Court or agitating the issue regarding his age in any higher forum. The conviction and sentence recorded by the trial Court was also assailed on merits before the High Court but not on the ground that the trial was vitiated on account of the appellant being a juvenile, not triable by an ordinary criminal Court. It was only in this Court that long after the appeal was filed that a fresh claim for benefit under the 2000 Act was made by the appellant in which this Court directed a fresh enquiry that was conducted in terms of Rule 12 of the Rules framed under the 2000 Act. The enquiry report submitted supports the appellant's claim of his being a juvenile under Section 2(k) of the 2000 Act, hence, entitled to the benefits admissible thereunder. Although an attempt was made by the respondent-State to assail the finding that the appellant was less than 18 years of age on the date of the occurrence, we do not see any cogent reason to hold that the appellant was more than 18 years on the date of the occurrence. In my view, the determination of age of the appellant, by the trial Court, on the basis of the first medical examination is fully supported and corroborated by the medical examination of the appellant conducted in the course of the enquiry directed by this Court by our order dated 19th November, 2010. The medical examination conducted by the Board of Doctors has determined the appellant's

age to be 40 years as on 24th December, 2010 which implies that he was around 17 ½ years old on the date of the occurrence. Superadded to the medical evidence is the documentary evidence that has come to light in the course of the enquiry in the form of the Family Register (Ex. Ka-3) maintained by the Panchayat and proved by A.P.W.2-Gokaran Nath Tiwari, Gram Panchayat Officer. According to this witness who spoke from the register, the appellant was born in the year 1969. The Electoral roll for the year 2009 for the constituency in which the appellant's village falls, also mentions this age to be 37 years, implying thereby that he was around 17 years old on the date of the occurrence. Deposition of the Gram Sabha Head examined as PW-12 in the course of the enquiry is supportive of the age of the appellant as given in the Electoral roll. The two medical examinations and the documents referred to above come from proper custody and lend complete corroboration to the appellant's age being above 16 years on the date of the occurrence. Besides, what cannot be lightly brushed away is the fact that the appellant was a married man on the date of the occurrence and that the charge levelled against him was one of dowry harassment and dowry death of his wife who was 19 years old at the time of her demise. If the appellant was only 13 years and 8 months old as suggested by the school certificate the question of his harassing the deceased almost six years his senior would not arise for he would be only an adolescent while his wife- the deceased was a grown up girl who could hardly get harassed by a mere child so young in age that he had barely cut his teeth. The trial Court did not in that view commit any error of jurisdiction in trying the appellant for the offences alleged against him.

9. The upshot of the above discussion is that while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the 2000 Act, no matter the later enactment was not on the statute book on the date of the occurrence. The difficulty arises when we examine whether the trial and the resultant order of conviction of the appellant, would also deserve to be set aside as illegal and without jurisdiction. The conviction cannot however be set aside for more than one reason. Firstly because there was and is no challenge to the order of conviction recorded by the Courts below in this case either before the High Court or before us. As a matter of fact the plea of juvenility before this Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the Court concerned had no jurisdiction to try the appellant.

10. Secondly because the fact situation in the case at hand is that on the date of the occurrence i.e. on 24th May, 1988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the 1986 Act that covered the field at that point of time, nor did the 1986 Act deprive the trial Court of its jurisdiction to try the appellant for the offence he was charged with. Repeal of the 1986 Act by the 2000 Act raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional Court by enacting Section 20 of the Juvenile Justice (Care and Protection) Act, 2000 which is to the following effect:

> "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."

11. A plain reading of the above brings into bold relief the following features that have a significant bearing on the controversy at hand:

(i) The provision starts with a non-obstante clause, which implies that the provisions have an overriding effect on all other provisions contained in the enactment.

(ii) The provision deals with proceedings pending against a juvenile in any court.

(iii) The provision sanctions the continuance of such pending proceedings in the very same court, as if the 2000 Act had not been enacted.

(iv) The provision requires the Court seized of the matter to record a finding as to whether the juvenile has committed an offence.

(v) If the finding is against the juvenile in that he is found to have committed an offence, the court is required to forebear from passing an order of sentence and instead forward the juvenile to the Board, which shall then pass an order in accordance with the provisions of the Act, as if it had been satisfied on inquiry under the Act that the juvenile had committed an offence.

(vi) In all pending cases including trial, revision, appeal or any other criminal proceedings the determination of juvenility 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 the 2000 Act.

12. It is manifest, that a case that was pending before 'any Court' (which expression would include both the trial Court and the High Court) would continue in that Court, who would not only proceed

with the trial and/or hearing of the case as if the 2000 Act was not on the Statute book but also record a finding as to the guilt or innocence of the juvenile. Far from stipulating a specific prohibition, the provisions of Section 20, make it obligatory for the Court concerned to proceed with the matter and record its conclusion as to the guilt or otherwise of the juvenile. The prohibition is against the Court passing an order of sentence against the juvenile, for which purpose the juvenile has to be forwarded to the Board for appropriate orders. That is precisely the view which this Court has taken in a line of decisions to which I may briefly refer at this stage.

13. In Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551, this Court while interpreting the provisions of Section 20 (supra) held that the same is attracted to cases where the person, if male, has ceased to be a juvenile under the 1986 Act being more than 16 years of age but had not yet crossed the age of 18 years. Such cases alone were within the comprehension of Section 20 of the Act, observed the Court, in which the Court seized of the matter was bound to record its conclusion, as to the guilt or innocence of the accused. The Court said:

> "30. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with 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 date of 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 is 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 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." (emphasis supplied)

14. To the same effect is the decision of this Court in Bijender Singh v. State of Haryana and Anr. (2005) 3 SCC 685, where this Court reiterated the legal position as to the true purpose of Section 20 in the following words:

> "8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to 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 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.
>
> 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...

xx xx xx

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." (emphasis supplied)

15. Reference may also be made to the decision of this Court in Dharambir v. State (NCT of Delhi) (2010) 5 SCC 344 where too this Court interpreted Section 20 of the Act, and the explanation appended to the same, to declare that the provision enables the Court to determine the juvenility of the accused even after conviction and while maintaining the conviction to set aside the sentence imposed upon him and to forward the case to the Board for passing an appropriate order in accordance with the provisions of the Act. This Court observed:

> "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 1st April, 2001, when the Act of 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. Clause (l) of Section 2 of the Act of 2000 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 Act of 2000."

16. Two recent decisions of this Court are a timely reminder of the legal position on the subject to which I may gainfully refer at this stage. In Daya Nand v. State of Haryana (2011) 2 SCC 224, this Court, reiterated the law on the subject in the following words.

"11. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined `juvenile or child' in Section 2(k)to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in Section 20 also contained a provision in regard to cases that were pending when it came into force and in which the accused at the time of commission of offence was below 18 years of age but above sixteen years of age (and hence, not a juvenile under the 1986 Act) and consequently who was being tried not before a juvenile court but a regular court." (emphasis supplied)

17. Similarly in Kalu @ Amit v. State of Haryana (2012) 8 SCC 34, this Court summed up the law in the following passage:

> "16. 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 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 in force for all purposes and for all material times when the alleged offence was committed..."

18. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the Court concerned will continue and be taken to their logical end except that the Court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial Court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the Courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

19. The matter can be examined from another angle. Section 7A (2) of the Act prescribes the procedure to be followed when a claim of juvenility is made before any Court. Section 7A (2) is as

under:

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

20. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any Court, upon such Court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have effect. There is no provision suggesting, leave alone making it obligatory for the Court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court. Applying the maxim of expressio unius est exclusio alterious, it would be reasonable to hold that the law in so far as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the Courts to set aside the conviction recorded by the lower court. The Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7A(2) of the Act.

21. In Kalu @ Amit's case (supra), the plea of juvenility was raised before this Court for the first time as is the position in the present case also. This Court while dealing with the options available noticed the absence of plea on the ground of juvenility and held that even if such a plea had been raised before the High Court, the High Court would have had to record its finding that Kalu @ Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board for passing an order under Section 15 of the Juvenile Act. The Court observed:

> "24. The instant offence took place on 7-4-1999. As we have already noted Kalu alias Amit was a juvenile on that date. He was convicted by the trial court on 7-9-2000. The Juvenile Act came into force on 1-4-2001. The appeal of Kalu alias Amit was decided by the High Court on 11-7-2006. Had the defence of juvenility been raised before the High Court and the fact that Kalu alias Amit was a juvenile at the time of commission of the offence has come to light the High Court would have had to record its finding that Kalu alias Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board and the Board would have passed any appropriate order permissible under Section 15 of the Juvenile Act (see Hari Ram)."

22. That procedure has been followed in several other cases where this Court has, after holding the accused to be a juvenile as on the date of the commission of offence, set aside the sentence awarded

to him without interfering with the order of conviction. (See: Pradeep Kumar & Ors. v. State of U.P. 1995 Supp (4) SCC 419, Bhola Bhagat & Ors. v. State of Bihar (1997) 8 SCC 720, Upendra Kumar v. State of Bihar (2005) 3 SCC 592, Vaneet Kumar Gupta @ Dharmindher v. State of Punjab (2009) 17 SCC 587).

23. In the totality of the above circumstances, there is no reason why the conviction of the appellant should be interfered with, simply because he is under the 2000 Act a juvenile entitled to the benefit of being referred to the Board for an order under Section 15 of the said Act. There is no gainsaying that even if the appellant had been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court in terms of Section 8 of the 1986 Act. The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it. In an ideal situation a case filed before an ordinary Criminal Court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also. But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board.

24. With the above observations, I agree with the Order proposed by brother Lokur, J.

.....J. (T.S. Thakur) New Delhi July 10, 2013