Karan @ Faitya vs The State Of Madhya Pradesh on 3 March, 2023

Author: Vikram Nath

Bench: Sanjay Karol, Vikram Nath, B.R. Gavai

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.572-573 OF 2019

KARAN @ FATIYA …APPELLANT

VERSUS

THE STATE OF MADHYA PRADESH …RESPONDENT

JUDGMENT

VIKRAM NATH, J.

1. The present appeals assail the correctness of the judgment and order dated 15.11.2018 whereby a Division Bench of the High Court of Madhya Pradesh, Bench at Indore, affirmed the death sentence awarded by the Trial Court and at the same time dismissed the appeal preferred by the appellant against his conviction and sentence awarded by the Trial Court.

2. The present appellant was charged for offences under sections 363, 376(2)(i) of the Indian Penal Code1, sections 5(m)/6 of the POCSO Act and sections 302 and 201 IPC. The Trial Court vide judgment dated 17.05.2018 convicted the appellant for all the offences and awarded the following sentences as against each of the offences:

Offence under section	Sentence	Fine
363 IPC	5 years RI	Rs.1,000/-
376(2)(i) IPC	Life imprisonment	Rs.5,000/-
5(m)/6 of POCSO Act	Life imprisonment	Rs.5,000/-
302 IPC	Death sentence	Rs.5,000/-
201 IPC	5 years RI	Rs.5,000/-

3. The appeal preferred by the appellant was dismissed by the High Court and the death reference forwarded by the Trial Court was affirmed, as already noted above. In short, "IPC"

4. During the pendency of these appeals, the appellant moved an application being I.A.No.43271 of 2019 claiming juvenility and consequently the benefits available under the provisions of the Juvenile Justice (Care and Protection) Act, 20152. This application was apparently filed under Section 9(2) of the 2015 Act. This Court, vide order dated 28.09.2022 required the Trial Court to submit its report after due inquiry as to whether the appellant was a juvenile on the date when the offence in question was committed. The order dated 28.09.2022 is reproduced below:

> "Pursuant to directions issued on the last occasion, certain Reports/Documents have been placed on record.
>
> Without commenting on merits or demerits of the rival submissions, we direct as under:
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> a. The copies of the record be sent to the concerned Trial Court as early as possible in physical form as well as in digitized form.
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> b. The accused shall be produced before the concerned Trial Court within a week's time.
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> The 2015 Act c. The Trial Court shall endeavour to consider whether the appellant was juvenile as on the date when the offence in question was committed.
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> d. For arriving at this conclusion, the Trial Court shall be entitled to call for and consider all the relevant documents as well as have the facility of medical check-up of the appellant in a manner known to law. e. The Report in that behalf shall be submitted in the Registry of this Court within four weeks. List this matter for further consideration along with the Report in the week commencing 31st October 2022."

5. Pursuant to the said order, a report has been received from the Court of First Additional Sessions Judge, Manawar, District Dhar, Madhya Pradesh dated 27.10.2022 running into 20 pages along with all the material evidence both documentary and oral adduced before it on the basis of which the report has been submitted. As per the said report, the appellant's date of birth was found to be conclusively proved as 25.07.2002. The date of the incident being 15.12.2017, the appellant was 15 years 04 months and 20 days of age on the date of the incident. The operative part of the report is reproduced below:

> "It is found conclusively proved that date of birth of the applicant/accused Karan is 25.07.2002. It is also proved taking into account 25.07.2002 as his date of birth, the applicant was 15 years 04 months 20 days of age as on 15.12.2017, and being below 16

years of age, he was Child as per section 2(12) of J.J. Act, 2015. Accordingly, the inquiry proceedings are concluded."

6. At the outset learned senior counsel for the appellant has clarified that for the present he is only pressing the plea of juvenility and if he fails on that count would address on the issue of conviction and sentence. Further based on the said report, learned senior counsel for the appellant submitted firstly that the sentence awarded cannot be given effect to under Section 9(2) of the 2015 Act. Secondly, it is submitted that from the date of the arrest in December, 2017, the appellant has already undergone incarceration of more than 5 years whereas under section 18 of the 2015 Act, a juvenile below 16 years, even if convicted for a heinous offence, the maximum sentence that can be awarded is 3 years stay in a special home. In view of the above, according to learned senior counsel the appellant is liable to be released forthwith.

7. Learned counsel for the State of Madhya Pradesh has strenuously urged that the appellant be subjected to an ossification test to determine the correct age, as according to her, the documents filed during the inquiry before the Trial Court are not covered under Section 94 of the 2015 Act, and therefore, the only option left was that an ossification test be conducted by a medical board. No other submission has been advanced on behalf of the State.

8. Before considering the submissions advanced by learned counsel for the parties, it would be necessary to first consider the inquiry report submitted by the Trial Court dated 27.10.2022. If the said report is accepted and approved, then the appellant would be declared to be a child which may then entail necessary consequences as per the 2015 Act. It would be relevant to note here that no objection has been filed by the respondent-State to the report submitted by the Trial Court. The only submission advanced on behalf of the respondent-State is for getting the ossification test conducted.

9. We have perused the report and also the material evidence led before the Trial Court on the basis of which the conclusion has been drawn by the Trial Court. The report is based upon documentary evidence as also oral evidence of the present head-mistress (IW-01), the retired headmaster (IW-08), five teachers of the primary institution (IW-02, IW-04, IW-07, IW-09 and IW-10) and also the guardian of the appellant (IW-06). It would also be pertinent to notice that the institution is not a private institution but is a government primary school and this Court does not find any reason to dis-believe or even doubt the testimony of government servants both working and retired. In addition to the mark sheets by the institution, there is also the date of birth certificate issued by the institution (I-3). Further, the original Scholar register and other documents were also produced before the Trial Court in the inquiry. This Court, therefore, has no reason to doubt the correctness of the conclusion arrived at by the Trial Court regarding the date of birth of the appellant.

We, therefore, accept the report of the Trial Court and hold that the appellant was aged 15 years, 4 months and 20 days on the date of the incident.

10. In order to test the submission of learned counsel for the respondent-State, Section 94 of the 2015 Act which is relevant is reproduced hereunder:

> "94 Presumption and determination of age:
>
> (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

> Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
>
> (3) The age recorded by the Committee or the Board 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."

11. On a careful perusal of the above noted provision and the facts of the present case, the above argument of the learned counsel for the State is liable to be rejected for the following reasons:

> a) firstly, that during the inquiry before the Trial Court, the State did not take any objection whatsoever with regard to the documents filed on behalf of the appellant and the evidence led on behalf of the appellant so much so that the State did not even cross-

examine the witnesses who were examined in the inquiry. Permitting the State to raise such an objection now once the conclusive finding has been recorded by the Trial Court after an elaborate inquiry would be unjust and not warranted. The State had full opportunity to raise such a plea before the Trial Court in the inquiry and then it was for the Trial Court to take a call as to whether any ossification test was necessary or not;

b) Secondly, ossification test will only give a broad assessment of the age. It cannot give an exact age. There is also an element of margin of plus or minus 1 to 2 years. Even if we permit the said test, it does not lead us anywhere. It will have no bearing on the assessment made by the Trial Court after the inquiry;

c) Thirdly, the first preference for determination of age is the birth certificate issued by the school or a matriculation certificate. Although it has been submitted that no birth certificate of the school was submitted, learned counsel for the appellant has pointed out from the documents attached to the report that in addition to the mark sheets and the school leaving certificate, the birth certificate was also filed which is Annexure I-3 to the report. It is in the absence of the first category of documents being not available that the birth certificate from the municipal corporation is to be considered; and

d) Lastly, if under the first and second columns, documents are not available, then reference to medical board and holding of an ossification test comes into play.

12. In the present case, there being birth certificate from the school available and that too a government primary school, we do not find any reason to doubt its correctness and all the more when it has been duly proved in the inquiry before the Trial Court. Thus, the objections raised by the learned counsel for the State are liable to be rejected.

13. The next question is as to what relief the appellant can be granted in view of the fact that he has been held to be a child and that too below 16 years of age under the 2015 Act. In this context Section 9 of the 2015 Act would be relevant. The same is reproduced hereunder:

> "9. Procedure to be followed by a Magistrate who has not been empowered under this Act.— (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.
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> (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

> Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.
>
> (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.
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> (4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

14. A perusal of the aforesaid section firstly gives a right to a person alleged to have committed an offence to claim that he is a child on the date of commission of offence and if such a claim is raised, the Court concerned shall make an inquiry, take such evidence as may be necessary other than the affidavit to determine the age of such person. The proviso to sub-section (2) further makes it clear that such a claim can be raised before any Court and the same could be recognised at any stage even after the case has been finally decided. The claim so made would be determined in accordance with the provisions of the 2015 Act and the rules made thereunder even if such person has seized to be a child whether on or before the commencement of 2015 Act. The law provides full coverage to a person who is established to be a child on the date of the offence to avail the benefits admissible to a child under the 2015 Act even if the case has been finally decided and also such person has attained majority. Further, sub-section (3) provides that if it is found in the inquiry that such person was a child on the date of commission of such offence then the Court is required to forward the child to the Juvenile Justice Board3 for passing appropriate orders and further if any sentence has been imposed by the Court, the same shall be deemed to have no effect. In view of the above statutory provisions and in view of the findings recorded, the appellant having been held to be a child on the date of commission of the offence, the sentence imposed has to be made ineffective.

15. The relief to be extended to the appellant may be examined through a different perspective also, that is, whether he has already undergone maximum sentence which can be awarded against a child in conflict with law In short, "JJB" for committing a heinous offence and who is below age of 16 years. Section 18 of the 2015 Act would be relevant in this respect and the same is reproduced hereunder:

> "18. Orders regarding child found to be in conflict with law.— (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and

past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-

section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

16. On a perusal of the aforesaid Section 18 of the 2015 Act, it is to be noticed that the JJB having found a child to be in conflict with law who may have committed a petty or serious offence and where heinous offence is committed, the child should be below 16 years, can pass various orders under clauses (a) to (g) of sub-section (1) and also sub-section (2). However, the net result is that whatever punishment is to be provided, the same cannot exceed a period of three years and the JJB has to take full care of ensuring the best facilities that could be provided to the child for providing reformative services including education, skill development, counselling and psychiatric support.

17. In the present case, the appellant is held to be less than 16 years, and therefore, the maximum punishment that could be awarded is upto 3 years. The appellant has already undergone more than 5 years. His incarceration beyond 3 years would be illegal, and therefore, he would be liable to be released forthwith on this count also.

18. Having considered the facts of the case and the findings recorded above, it would also be appropriate to briefly deal with the case law on the point as to whether once an accused after conviction at the stage of appeal is held to be a juvenile/child under the provisions of the 2015 Act, what would be the status of the trial, the conviction and sentence recorded by the Trial Court and the appellate Courts. Whether the trial itself would stand vitiated for lack of jurisdiction by the regular Sessions Court and it would be the JJB alone which could make an inquiry into the offence committed based upon the evidence led by the prosecution. If the inquiry has not been conducted by the JJB, then whether the entire proceedings need to be quashed or only the sentencing aspect would require consideration in accordance with the 2015 Act.

19. We may note here at the outset that the appellant for the present has chosen not to challenge the conviction but is only claiming juvenility and consequently the benefit of sentence provided under the 2015 Act, reserving his right to address on conviction and sentence if he fails on the preliminary issue of juvenility.

20. There are a series of judgments on the said issue. Some have set aside the conviction, sentence and have terminated the proceedings, others have upheld the conviction but on the basis of sentence already undergone being more than the maximum permissible under the Juvenile Justice (Care and Protection of Children) Act, 20004 have directed for release of the accused and third, where after maintaining the conviction, this Court has referred the matter to the JJB for passing appropriate orders on sentence. All the judgments delivered earlier which are briefly discussed hereunder relate to the 2000 Act. Present case falls under the 2015 Act as the offence itself is of the year 2017.

21. In the case of Jitendra Singh alias Babboo Singh and another vs. State of Uttar Pradesh5, a two-Judge Bench of this Court confirmed the conviction but as the appellant therein could only be awarded imposition of fine, the existing fine of Rs.100/- was found to be grossly inadequate and accordingly, the matter was remitted to the JJB 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 the victim.

In short "2000 Act" 2013 (11) SCC 193

22. Justice Madan B. Lokur, the first author of the judgment dealt with the issue as to whether the conviction could be sustained by this Court or it was only the sentence which was to be dealt with in accordance with the 2000 Act. Almost all the previous judgments were referred to in paragraphs 24, 24.1 to 24.7, 25, 25.1 to 25.2, 26, 26.1 to 26.2 and 27 of the report with respect to all the four categories of the cases wherein different views have been taken by this Court. The first category was where conviction was upheld but sentence quashed. The second category was where conviction was upheld but sentence was modified to the period already undergone. The third category was where conviction and sentence both were set aside and the fourth category was where the conviction was upheld and the matter referred to the JJB for awarding a suitable sentence. In paragraph 28 of the report Justice Lokur sums up the four categories. Further in paragraph 29, reference is made to section 20 of the 2000 Act and it was finally concluded in paragraph 30 that the matter needs to be examined on merits and if the juvenile is found guilty of the offence, he could not be allowed to go unpunished but considering the provisions of the 2000 Act, the question of sentence must be left to the JJB. It would be proper to reproduce paragraphs 28, 29 and 30 of the report of Justice Lokur, which read as follows:

> "28. 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.
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> 29. 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:
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> "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.
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> 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."

30. 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 (2012) 9 SCC 750, should be followed."

23. Justice T.S. Thakur while concurring with the view taken by Justice Lokur, in his supplementing opinion also dealt with this aspect of the matter and in paragraph 82 of the report was of the view that insofar as the conviction was concerned, the same could be examined by this Court, however, on the sentence part, the benefit admissible under the 2000 Act ought to be extended. Paragraph 82 of the report is reproduced hereunder: -

> "82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any court, upon such court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) effect. There is no provision suggesting, leave alone making it obligatory for the court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court. Applying the maxim expressio unius est exclusion alterius, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the courts to set aside the conviction recorded by the lower court. Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That

> perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7-A(2) of the Act."

24. Similar view was taken by a two-Judge Bench of this Court in the case of Mahesh vs. State of Rajasthan and others6, wherein this Court confirmed the conviction. However, the sentence imposed was modified to the period undergone. The aforesaid judgment relies upon the law laid down in the case of Jitendra (supra). After framing the issue as to whether the validity/correctness of the conviction recorded by Trial Court could be maintained, this Court proceeded to give due consideration in paragraph nos. 4, 5 and 6 of the judgment. Thereafter the Bench proceeded to consider the merits of the conviction and upheld the same in paragraph no.7. Paragraph nos. 4 to 7 of the report are reproduced hereunder:

> "4. In the aforesaid facts, two questions arise for determination in the present appeals before us. The (2018) SCCOnline SC 3655 first is with regard to the validity/correctness of the conviction recorded by the learned trial Court and affirmed by the High Court and, secondly, if the conviction to be maintained what should be the appropriate measure of punishment/sentence and whether the same should be imposed by this Court or the matter be remanded to the Juvenile Justice Board in accordance with the provisions of Section 20 of the Act of 2000.

5. The position in law in this regard is somewhat unsettled as has been noticed and dealt with by this Court in Jitendra Singh alias Babboo Singh and another versus State of Uttar Pradesh wherein in paragraphs 24 to 27 four categories of cases have been culled out where apparently different approaches had been adopted by this Court. The net result is summed up in paragraph 28 of the aforesaid report which explains the details of the categorization made in the earlier paragraphs of the said report. Paragraph 28 of the said report, therefore, would require a specific notice and is reproduced below:

> "28. 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."

6. The validity of the conviction in respect of the incident which occurred almost two decades back, in our considered view, ought to be decided in these appeals and the entire of the proceedings

including the punishment/sentence awarded should not be interfered with on the mere ground that the accused appellants were juveniles on the date of commission of the alleged crime. Judicial approaches must always be realistic and have some relation to the ground realities. We, therefore, adopt one of the possible approaches that has been earlier adopted by this Court in the four categories of cases mentioned above to examine the correctness of the conviction of the accused appellants under the provisions of the IPC, as noticed above.

7. In this regard, having perused the materials on record we find no ground whatsoever to take a view different from what has been recorded by the learned trial Court and affirmed by the High Court. The conviction of the accused appellants under Sections 323, 324, 325, 427, 455 read with Section 149 IPC accordingly shall stand affirmed."

25. In the case of Satya Deo alias Bhoorey vs. State of Uttar Pradesh7, following the ratio and legal position laid down in Jitendra Singh (supra), this Court upheld the conviction and after setting aside the sentence of life imprisonment awarded to the appellant, it was directed that the jail authorities would produce the appellant before the JJB within seven days, and thereafter, the JJB would pass appropriate orders regarding the detention and custody with respect to the appellant therein.

26. We may also refer to the judgment of this Court in the case of Raju vs. State of Haryana8, wherein Justice (2020) 10 SCC 555 (2019) 14 SCC 401 Mohan M. Shantanagoudar speaking for himself, Justice N.V. Ramana (as he then was) and Justice Indira Banerjee, set aside the conviction and sentence of the appellant therein and as the appellant therein had already undergone almost six years' incarceration but had been released on bail, the bail bonds were discharged and all proceedings against the appellant were declared to have terminated.

27. In the aforesaid case, the appellant had not taken the plea of juvenility before the Trial Court, however, such plea was raised before the High Court but the same was rejected. However, this Court got an inquiry conducted by the Registrar (Judicial) of this Court who found him to be aged less than 18 years. The judgment in this case mainly dealt with the issue as to whether the report of Registrar (Judicial) of this Court could be accepted over and above the finding of the High Court which was different. The judgment proceeds to deal with this issue and ultimately comes to the conclusion that this could be done provided this Court itself tests the correctness of the report of the Registrar (Judicial). It is only in the penultimate paragraph no. 27 while allowing the appeal it granted the relief of setting aside the conviction, sentence and further terminated the entire proceedings. There is no prior discussion on the issue whether conviction was required to be set aside or not on this technical ground. Merits of the conviction was not gone into. No ratio is laid down in the said case on this issue. Only while granting relief, conviction has also been set aside.

28. Following the above judgment in the case of Raju (supra), a two-judge Bench of this Court in the case of Ashok Kumar Mehra and Another Vs. State of Punjab and Others9 set aside the judgment of conviction and sentence awarded to appellant no. 2 therein who had claimed to be a juvenile. Paragraph No. 14 of the said judgment which grants the relief is reproduced herein:

> In 2019 (6) SCC 132 "In view of the foregoing discussion, we are of the considered opinion that since Appellant 2 was a juvenile on the date of commission of the offence and though till date he has already undergone considerable jail sentence partly as an undertrial and partly as a convict, yet the appeal filed by Appellant 2 has to be allowed as was done in the case of Raju (supra) without going into the merits of the case and passing any other consequential order in that regard."

29. It will be pertinent to mention that in this judgment also there is no discussion with regard to the issue as to whether the conviction should be set aside. This judgment also does not lay down any ratio that if with respect to a juvenile a trial has been conducted by a Sessions Court without the accused having claimed juvenility before it, conviction could be set aside as being vitiated in law if subsequently it is held that the accused was a juvenile.

30. The above judgments relate to an offence covered by either the Juvenile Justice Act, 198610 or the 2000 Act. We now proceed to briefly discuss the provisions under the "the 1986 Act" 2015 Act. Section 9 of the 2015 Act is already reproduced in the earlier part of this judgment. According to sub- section (3) of section 9 of the 2015 Act, the Court which finds that the person who committed the offence was a child on the date of commission of such offence would forward the child to the JJB for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect. This does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be juvenile or a child, would also lose its effect rather it is only the sentence if any passed by the Court would be deemed to have no effect.

31. There is another reason why a trial conducted and conviction recorded by the Sessions Court would not be held to be vitiated in law even though subsequently the person tried has been held to be a child.

32. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court would have been completely excluded not only under section 9 of the 2015 Act but also under section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, under section 25 of the 2015 Act, it is clearly provided that any proceeding pending before any Board or Court on the date of commencement of the 2015 Act shall be continued in that Board or Court as if this Act had not been enacted. Section 25 is reproduced hereunder:

> "25. Special provision in respect of pending cases.
>
> - Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

33. Having considered the statutory provisions laid down in section 9 of the 2015 Act and also section 7A of the 2000 Act which is identical to section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the accused who has committed a heinous offence and who did not claim juvenility before the Trial Court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

34. In view of the above discussion and the position in law as laid down by the aforesaid judgments and many others referred to in the above judgments, we approve the view taken by this court in the case of Jitendra Singh (supra), Mahesh (supra) and Satya Deo (supra).

35. For all the reasons recorded above, it is ordered as follows:

The conviction of the appellant is upheld; however, the sentence is set aside. Further as the appellant at present would be more than 20 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. Appellant is in judicial custody. He shall be released forthwith. The impugned judgement shall stand modified to the aforesaid extent.

36. Both the appeals stand partly allowed.

37. Pending applications, if any, are disposed of.

……J. [B.R. GAVAI] ……J. [VIKRAM NATH]
……J. [SANJAY KAROL] NEW DELHI MARCH 03, 2023.