ARNIT DAS

v.

STATE OF BIHAR

MAY 9, 2000

[K.T. THOMAS AND R.C. LAHOTI, JJ.]

Criminal Law :

Juvenile Justice Act, 1986 :

Section 2(h) and 32—Juvenile—Age—Determination of—Crucial date—Held : The data on which the accused is brought before the competent authority is date with reference to which the age of the person has to be determined—The date of commission of the offence is irrelevant in this regard.

Section 32—Juvenile—Age—Determination of—Relevant factors to be considered—On the basis of relevant record Magistrate concluded that the accused was above 16 years and, therefore, not required to be tried by a Juvenile Court—Such finding was upheld by Sessions Court and High Court—Correctness of—Held : Supreme Court's interference not called for.

Constitution of India, 1950 :

Article 141—Ratio decidendi—Rule of sub silentio—A decision not expressed on a conscious consideration of an issue is not the ratio decidendi and cannot have binding effect.

Interpretation of Statutes:

Internal Aids—Preamble—It is permissible to look into the Preamble if the language is ambiguous so as to determine the legislative intent.

Doctrines:

Doctrine of sub silentio. Words and Phrases:

"Juvenile" and "neglected juvenile"—Meaning of —In the context of S.2 of the Juvenile Justice Act, 1986.

The appellant was arrested in connection with an offence under Section

A 302 of the Penal Code, 1860 and was produced before the Additional Chief Judicial Magistrate (ACJM), who after recording his statement under Section 164 of the Criminal Procedure Code, 1973, remanded him to juvenile home. The appellant claimed that he was a juvenile and, therefore, entitled to protection under the Juvenile Justice Act, 1986.

B The ACJM directed an enquiry to be held under Section 32 of the Act. The appellant was referred to examination by a medical Board. On receipt of the report of the Medical Board and on receiving such other evidence as was adduced on behalf of the appellant, the ACJM concludes that the appellant was above 16 years of age on the date of the occurrence and, therefore, was C not required to be tried by a Juvenile Court. This finding was upheld by the Sessions Court in appeal and the High Court in revision. Hence this appeal.

The following questions arose before this Court :-

Firstly, by reference to which date the age of the appellant is required D to be determined for finding out whether he is a juvenile or not. Secondly, whether the finding as to age, as arrived at by the Courts below and maintained by the High Court, can be sustained.

Dismissing the appeal, this Court

E HELD: 1.1. The scheme of the Juvenile Justice Act, 1986 contemplates its applicability coming into play only when the person may appear or be brought before the competent authority. A Police Officer or a Magistrate who is not empowered to act or cannot act as a competent authority has to merely form an opinion guided by the apparent age of the person and in the event of forming an opinion that he is a juvenile, he has to forward him to the competent F authority at the earlier subject to arrangements for keeping in custody and safety of the person having been made for the duration of time elapsing in between. The competent authority shall proceed to hold enquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by reference to the date when the person G was brought before it under any of the provisions of the Act. It is irrelevant what was the age of the person on the date of commission of the offence.

[78-D; 79-B-C]

1.2. The use of the word 'is' at two places in sub-section (1) of Section 32 of the Act read in conjunction with 'a person brought before it' also H suggest that the competent authority is required to record the finding by

reference to an event in presenting before it, i.e. by reference to the date when the *person is brought before* it and not by reference to a remote event i.e. the date on which the offence was committed. [79-D-E]

2.1. The term 'juvenile justice' before the onset of delinquency may refer to social justice; after the onset of deliquency, it refers to justice in the normal juridical sense. The Juvenile Justice Act provides for justice after the onset of delinquency. The societal factors leading to the birth of delinquency and the preventive measures, which would check juvenile delinquency, legitimately fall within the scope of social justice. Once a boy or a girl has assumed delinquency, his or her treatment and trial at the hands of the justice delivery system is taken care of by the provisions of the Juvenile Justice Act. The view so taken finds support from the Preamble to the Act and the statement of objects and reasons. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of child; and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post-juvenility. In short the field sought to be covered by the Act is not the one which had led to juvenile delinquency but the field when juvenile having committed a delinquency is placed for being taken care of post-delinquency. [81-A-D]

Treatise on the Juvenile Justice Act by Ved Kumari, Indian law Institute, New Delhi, pp.4 and 5 and juvenile Justice Act by Asutosh Mookerjee, published by S.C. Sarkar & Sons pp.20-21, referred to.

2.2. The procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds the person brought before it or appearing before it to be under 16 years of age if a boy under 18 years of age if a girl on the date of being so brought or such appearance first before the competent authority. The date of the commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of Clause (h) of Section 2 of the Act. If that would have been the intendment of the Parliament, nothing had prevented it from saying so specifically. [81-G-H; 82-A]

3.1. Generally speaking *Santanu Mitra, Bhola Bhagat* and *Gopinath* Ghosh cases are authorities for the propositions that:

(i) the technicality of the accused having not claimed the benefit of the provisions of the Juvenile Justice Act at the earliest opportunity or before any of the Courts below should not, keeping in view the intendment of the legislation, come in the way of the

A benefit being extended to the accused appellant even if the plea was raised for the first time before this Court;

(ii) a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may B be possible on the same evidence, the Court should lean in favour of holding the accused to be a juvenile in border line case; and

(iii) the provisions of the Act are mandatory and while implementing the provisions of the Act, those charged with responsibilities of C implementation should show sensitivity and concern for a juvenile. [82-F-H]

3.2. However, in none of these cases the specific issue-by reference to which date (the date of the offence or the date of production of the person before the competent authority), the Court shall determine whether the person D was a juvenile or not, was neither raised nor decided. [82-H; 83-A]

Santanu Mitra v. *State of W.B.,* [1998] 5 SCC 697; *Bhola Bhagat* v. *State of Bihar,* [1997] 8 SCC 720; *Gopinath Ghosh* v. *State of W.B.,* [1984] Supp. SCC 228 and *Krishna Bhagwan* v. *State of Bihar,* AIR (1989) Pat 217, held E inapplicable.

Dilip Saha v. *State of W.B.,* AIR (1978) Cal 529, overruled.

3.3. A decision not expressed, not accompanied by reason and not proceeding on conscious consideration of an issue cannot be deemed to be a F law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. [83-B]

State of U.P. v. *Synthetics and Chemicals Ltd.,* [1991] 4 SCC 138, relied G on.

4.1. The Preamble suggests what the Act was intended to deal with. If the language used by Parliament is ambiguous the Court is permitted to look into the Preamble for construing the provisions of an Act. The Preamble is a key to unlock the legislative intent. If the words employed in an enactment H may spell a doubt as to their meaning it would be useful to so interpret the

enactment as to harmonise it with the object, which the Legislature had in its view. [84-F-G] A

Burrakur Coal Co. Ltd. & East Indian Coal Co. Ltd. v. *Union of India* AIR (1961) SC 954 and *Kunja Musaliar* v. *Venkatachalam Potti,* AIR (1958) SC 246, relied on. B

4.2. The Legislative aims and objectives go to show that the Legislation has been made for taking care of the care and custody of a juvenile during investigation, inquiry and trial, i.e., from a point of time when the juvenile is available to the law administration and justice delivery system; it does not make any provision for a person involved in an offence by reference to the date of its commission by him. The long title of the Act too suggests that the content of the Act is the justice aspect relating to juveniles. [84-G-H; 85-A] C

5.1. However, the provisions of Chapter VI dealing with special offences in respect of juvenile have not been dealt with in this judgment. *Prima facie,* the view taken above would create no difficulty even in assigning a meaning to the term juvenile as occurring in Chapter VI (Sections 41 to 45) of the Act because a juvenile covered by any of these provisions is likely to fall within the definition of neglected juvenile as defined in Section 2(i) who shall also have to be dealt with by a Juvenile Board under Chapter III of the Act and the view taken above would hold the field there as well. But no opinion on the scope of Chapter VI of the Act is expressed and that aspect is left to be taken care of in a suitable case. [85-B-C] D E

5.2. Section 2 which defines 'juvenile' and 'neglected juvenile' itself begins by saying that the words defined therein 'would have the assigned meaning unless the context otherwise requires.' So far as the present context is concerned it is clear that the crucial date for determining the question whether a person is juvenile is the date when he is brought before the competent authority. [85-D] F

6. So far as the finding regarding the age of the appellant is concerned it is based on an appreciation of evidence and arrived at after taking into consideration the material available on record and valid reasons having been assigned for it. The finding arrived at by the ACJM has been maintained by the Sessions Court in appeal and the High Court in revision. No case has been made out for interfering therewith. [85-E-F] G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 469 of H

2000(5) eILR(PAT) SC 1

A 2000.

From the Judgment and Order dated 28.1.2000 of the Patna High Court in Crl. R. No. 713 of 1999.

U.R. Lalit, N.R. Choudhary, Jai Prakash Pandey and Somnath Mukherjee
B for the Appellant.

Altaf Ahmad, Additional Solictor General, L.R. Singh, B.B. Singh and Kumar Rajesh Singh for the Respondent.

The Judgment of the Court was delivered by

C

R.C. LAHOTI, J. On 5.9.1998, Crime No. 574/98 under Section 302, I.P.C. was registered at P.S. Kadamkuan, Patna. According to the FIR, one Abhishek was shot dead on that day. On 13.9.1998 the petitioner was arrested in connection with the said offence. On 14.9.1998 the petitioner was produced before the Additional Chief Judicial Magistrate, Patna who after recording his
D statement under Section 164 of the Code of Criminal Procedure remanded him to Juvenile home, Patna. The petitioner claimed to have been born on 18.9.1982 and therefore a juvenile, entitled to protection of The Juvenile Justice Act, 1986, (hereinafter 'The Act' for short). The petitioner's claim was disputed on behalf of the prosecution. The A.C.J.M. directed an enquiry to be held under
E Section 32 of the Act. The petitioner was referred to examination by a Medical Board. On receipt of the report of the Medical Board and on receiving such other evidence as was adduced on behalf of the petitioner, the A.C.J.M. concluded that the petitioner was above 16 years of age on the date of the occurrence and therefore was not required to be tried by a Juvenile Court. The finding has been upheld by the Sessions Court in appeal and the High Court
F in revision. The petitioner has filed this petition seeking leave to appeal.

Leave granted.

Two questions have arisen for consideration. Firstly, by reference to
G which date the age of the petitioner is required to be determined for finding out whether he is a juvenile or not. Secondly, whether the finding as to age, as arrived at by the Courts below and maintained by the High Court, can be sustained.

Shri U.R. Lalit, the learned senior counsel for the appellant has submitted
H that it is the date of the offence which is crucial for determining the age of

the person claiming to be juvenile while according to the learned Additional Solicitor General it is the date on which the person is brought before the competent authority by reference to which the age of the person is required to be determined so as to find whether he is a juvenile or not. A

The Juvenile Justice Act, 1986, as its preamble speaks, is "an Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juvenile and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles". The statement of objects and reasons, it will be useful to reproduce (with emphasis supplied by us) as under :- B

> "A review of the working of the existing Children Acts would indicate that much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles. C D
>
> 2. In this context, the proposed legislation aims at achieving the following objectives :- E
>
> (i) to lay down a *uniform legal framework for juvenile justice* in the country so as to ensure that no child under any circumstances *is lodged in jail or police lock-up.* This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts; F
>
> (ii) to provide for a specialised approach towards *the prevention and treatment* of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;
>
> (iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of *children coming within the purview of the juvenile justice* system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles; G H

A (iv) to establish norms and standards for *the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;*

(v) to develop appropriate linkages and co-ordination between *the* B *formal system of juvenile justice* and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles;

(vi) to constitute special offences in relation to juveniles and provide for punishments therefor;

C (vii) to bring the *operation of the juvenile justice system* in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.

3. As its various provisions come into force in different parts of the country they would replace the corresponding laws on the subject D such as the Children Act, 1960 and other State enactments on the subject.

The Bill seeks to achieve the above objects."

Clause (h) of Section 2 of the Act defines juvenile as under :-

E **"2. Definitions.-** In this Act, unless the context otherwise requires, -

xxx xxx xxx

(h) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;"

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Section 3 provides where an enquiry *has been initiated* against a juvenile and during the course of such enquiry a juvenile ceases to be such, then, notwithstanding anything contained in this Act or any other law for the time being in force, the enquiry may be continued and orders may be made in respect of such persons as if such person had continued to be a juvenile. G Chapter II of the Act speaks of competent authorities and institutions for juveniles such as Juvenile Welfare Boards, Juvenile Courts, Juvenile homes, Special homes, Observation homes and After-care organisations. Chapter III makes provision for neglected juveniles wherein is also included Section 17 making provision for uncontrollable juveniles. Chapter IV deals with delinquent H juveniles. Provisions contained in Sections 18 to 26 provide for bail and

custody of juvenile accused of a bailable or non- bailable offence, the manner of dealing with them and the orders that may be passed regarding or against delinquent juveniles. Proceedings under Chapter VIII of the Code of Criminal Procedure are not competent against juvenile. A juvenile and a person not a juvenile cannot be jointly tried. No disqualification attaches to conviction of a juvenile for any offence under any law. Then there are special provisions contained in Section 26 as to proceedings in respect of juveniles pending in any Court on the date of coming into force of the Act. Chapter V (Sections 27 to 40) lay down procedure of competent authorities generally under the Act and appeals and revisions from orders of such authorities. Chapter VI (Sections 41 to 45) provides for special offences in respect of juveniles. Chapter VII (Sections 46 to 63) contains miscellaneous provisions.

It is pertinent to note that neither the definition of juvenile nor any other provision contained in the Act specifically provides the date by reference to which the age of a boy or a girl has to be determined so as to find out whether he or she is a juvenile or not.

The learned Additional Solicitor General submitted that the answer is to be found in Section 32 of the Act which reads as under :-

> **"32. Presumption and determination of age.**—(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) *is a juvenile,* the competent authority shall make due enquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.
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> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile, and the age recorded by the competent authority to be *the age of the person so brought before it* shall, for the purpose of this Act, be deemed to be the true age of that person."

It is submitted by the learned Additional Solicitor General that order of the competent authority has been given a finality subject to decision in appeal and/or revision as regards the age of that person and the jurisdiction to record that finding commences when the person is brought before it. It is this expression which provides the vital clue to the date by reference to which the age is to be determined.

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A There are several provisions in the Act which provide for first appearance of the person before the competent authority. Competent Authority has been defined in Clause (d) of Section 2 to mean, in relation to neglected juveniles, a Juvenile Welfare Board constituted under Section 4 of the Act and, in relation to delinquent juveniles, Juvenile Court and where no such Board or Juvenile Court has been constituted, includes any Court empowered B under sub-section (2) of Section 7 to exercise the powers conferred on a Board or a Juvenile Court. Under sub-section (2) of Section 7, where no Board or Juvenile Court has been constituted for any area, the powers conferred on the Board or the Juvenile Court by or under the Act shall be exercised in that area by the District Magistrate or the Sub-Divisional Magistrate or any C Metropolitan Magistrate or Judicial Magistrate of the First Class, as the case may be. The powers conferred on the Board or Juvenile Court may also be exercised by the High Court and the Court of Sessions, when the proceeding comes before them in appeal, revision or otherwise.

The scheme of the Act contemplates its applicability coming into play D only when the person may appear or be brought before the competent authority. Under Section 8, when any Magistrate not empowered to exercise the powers of the Board or Juvenile Court under this Act is *of opinion* that the person brought before him under any of the provisions of this Act (otherwise then for the purpose of giving evidence) is a juvenile, he shall record such opinion E and forward *the juvenile* and the record of the proceeding to the competent authority having jurisdiction over the proceeding. The competent authority to which the proceeding is so forwarded shall hold the enquiry as if the juvenile had originally been brought before it.

Under Section 18, when any person accused of a bailable or non- F bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, or in any other law for the time being in force, be released on bail with or without surety unless there appears reasonable grounds for believing that the release is likely to bring him G in association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice. In the latter case, the person has to be kept in an observation home or a place of safety until he can be brought before a Juvenile Court. The Juvenile Court if not releasing the person on bail must not commit him to prison but send him to an observation home or a place of safety during the pendency of the enquiry before him. Under Section H 20, where a juvenile charged with an offence appears or is produced before

a Juvenile Court, the Juvenile Court shall hold an enquiry in accordance with the provisions of Section 39. A reading of all these provisions referred to herein above makes it very clear that an enquiry as to the age of the juvenile has to be made only when he is brought or appears before the competent authority. A Police Officer or a Magistrate who is not empowered to act or cannot act as a competent authority has to merely form an opinion guided by the apparent age of the person and in the event of forming an opinion that he is a juvenile, he has to forward him to the competent authority at the earliest subject to arrangements for keeping in custody and safety of the person having been made for the duration of time elapsing in between. The competent authority shall proceed to hold enquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by reference to the date when person was brought before it under any of the provisions of the Act. It is irrelevant what was the age of the person on the date of commission of the offence. Any other interpretation would not fit in the scheme and phraseology employed by the Parliament in drafting the Act.

A B C D

The use of the word 'is' at two places in sub-section (1) of Section 32 of the Act read in conjunction with 'a person brought before it' also suggests that the competent authority is required to record the finding by reference to an event in presenti before it, i.e. by reference to the date when the *person is brought* before it and not by reference to a remote event i.e. the date on which the offence was committed.

E

Prior to the enactment of the Juvenile Justice Act, 1986 there were several laws prevailing in different States and the need for a uniform legislation for juveniles for the whole of India was expressed in various forums including the Parliament. Such uniform legislation was not being enacted on the ground that the subject matter of such a legislation fell in the State List of the Constitution. The U.N. Standard Minimum Rules for the administration of juvenile justice enabled the Parliament exercising its powers under Article 253 of the Constitution read with entry 14 of the Union List to make any law for the whole of India to fulfil international obligations (see Treatise on the Juvenile Justice Act by Ved Kumari, Indian Law Institute, New Delhi, p.5). The said United Nations Standard Minimum Rules, called Beijing Rules, adopted by the General Assembly in 1985 vide Chapter 2 & 5 of Part-I provide as under:-

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"**2. Scope of the Rules and definitions used**

2.1. The following Standard Minimum Rules shall be applied to juvenile

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A offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2. For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with
B their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.

C (b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

D 2.3. Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the *administration of juvenile justice* and designed:

(a) to meet the varying needs of juvenile offenders, while protecting
E their basic rights;

(b) to meet the needs of society; and

(c) to implement the following rules thoroughly and fairly.

xxx xxx xxx

F xxx xxx xxx

5. Aims of juvenile justice

5.1. The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders
G shall always be in proportion to the circumstances of both the offenders and the offence."

[Source - Juvenile Justice Act by Asutosh Mookerjee published by S.C. Sarkar & Sons, pp. 20-21]

H The term 'juvenile justice' before the onset of delinquency may refer to

social justice; after the onset of delinquency, it refers to justice in its normal juridical sense. (See - "Juvenile Justice : Before and after the onset of delinquency", working paper prepared by the Secretariat for 6th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, quoted at page 4 of The Treatise, Ved Kumari, ibid). The Juvenile Justice Act provides for justice after the onset of delinquency. The societal factors leading to birth of delinquency and the preventive measures which would check juvenile delinquency legitimately fall within the scope of social justice. Once a boy or a girl has assumed delinquency, his or her treatment and trial at the hands of justice delivery system is taken care of by the provisions of the Juvenile Justice Act. The view so taken finds support from the preamble to the Act and the statement of objects and reasons. The preamble speaks for the Act making provisions for the things post- delinquency. Several expressions employed in the statement of objects and reasons vocally support this view. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of child; and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post- juvenility. In short the field sought to be covered by the Act is not the one which had led to juvenile delinquency but the field when juvenile having committed a delinquency is placed for being taken care of post-delinquency.

During the course of hearing, the Court posed a question to Shri U.R. Lalit, the learned senior counsel for the appellant - What happens if a boy or a girl of just less than 16 or 18 years of age commits an offence and then leaves the country or for any reasons neither appears nor is brought before the competent authority until he or she attains the age of say 50 years ? If the interpretation suggested by the learned senior counsel for the appellant were to be accepted, he shall have to be sent to a juvenile home, special home or an observation home or entrusted to an after care organisation where there would all be boys and girls of less than 16 or 18 years of age. Would he be required to be dealt by a Juvenile Welfare Board or a Juvenile Court ? The learned senior counsel, with all the wits at his command, had no answer till the end and had to give up ultimately. We are, therefore, clearly of the opinion that the procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds the person brought before it or appearing before it is found to be under 16 years of age if a boy and under 18 years of age if a girl on the date of being so brought or such appearance first before the competent authority. The date of the commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of Clause (h) of Section 2 of the Act. If that would have been the

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A intendment of the Parliament, nothing had prevented it from saying so specifically.

Section 3 of the Act also provides a clue to the legislative intent. It provides for an enquiry initiated against the juvenile being continued and orders made thereon even if such person had ceased to be a juvenile during
B the course of such enquiry. There would have been no need of enacting Section 3 if only the age of the juvenile would have been determinable by reference to the date of the offence.

Shri U.R. Lalit, the learned senior counsel for the appellant invited our
C attention to *Santanu Mitra* v. *State of W.B.*, [1998] 5 SCC 697, *Bhola Bhagat* v. *State of Bihar,* [1997] 8 SCC 720 and *Gopinath Ghosh* v. *State of W.B.*, [1984] Supp. SCC 228 and to a number of other decisions which we do not propose to catalogue separately for most of them have been referred to in paras 14 and 15 of the decision in *Bhola Bhagat* (Supra). What has been emphasized by Shri Lalit is that in all these cases the question whether the person, arrayed
D as accused/appellant before the Court, was a juvenile or not was decided by taking into consideration the age of the accused on the date of the occurrence or the date of the commission of the offence. We have carefully pursued all these decisions. In all these cases the counsel for the contesting parties before the Court have made their submissions by assuming that the date of
E the offence was the relevant date for determining the age of the juvenile. Accordingly this Court, having examined the facts of each case, recorded a finding as to the age of the accused on the date of the occurrence of the offence. Generally speaking these cases are authorities for the propositions that (i) the technicality of the accused having not claimed the benefit of the provisions of the Juvenile Justice Act at the earliest opportunity or before
F any of the Courts below should not, keeping in view the intendment of the legislation, come in the way of the benefit being extended to the accused appellant even if the plea was raised for the first time before this Court; (ii) a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was
G a juvenile and if two views may be possible on the same evidence, the Court should lean in favour of holding the accused to be a juvenile in border line cases; and (iii) the provisions of the Act are mandatory and while implementing the provisions of the Act, those charged with responsibilities of implementation should show sensitivity and concern for a juvenile. However, in none of the cases the specific issue - by reference to which date (the date of the offence
H or the date of production of the person before the competent authority), the

Court shall determine whether the person was a juvenile or not, was neither raised nor decided. A

A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined. (See *State of U.P.* v. *Synthetics & Chemicals Ltd.*, [1991] 4 SCC 138, para 41. B

Full Bench decision of the High Court of Calcutta in *Dilip Saha* v. *State of West Bengal,* AIR (1978) Calcutta 529 and Full Bench decision in *Krishna Bhagwan* v. *State of Bihar,* AIR (1989) Patna 217 were strongly relied on by the learned senior counsel, Shri Lalit submitting that the question specifically arising for consideration before this Court was also before the two High Courts. We have examined the two decisions. In *Dilip Saha* (supra) the Calcutta High Court, interpreting the provisions of WB children Act, 1959 which is a *pari materia* enactment, has taken the view that the age of the accused at the time of the commission of the offence is the relevant age for attracting the provisions of the WB Children Act, 1959 and not his age at the time of trial. Vide paras 22 to 24 the Full Bench has assigned two reasons for taking the view which it has done which in our opinion are both erroneous. One reason is that according to Section 24 of that Act a child cannot be sentenced to death or ordinarily to imprisonment then denying the benefit of the provisions of the Act to a person who was a child on the date of the offence but had ceased to be so on the date of commencement of the inquiry or trial, may result in the child being sentenced to death or imprisonment for life consequent upon his being held guilty which would be violative of Article 20 (1) of the Constitution which prohibits any person on conviction for any offence being subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The High Court has overlooked that Article 20 (1) of the Constitution would be attracted only if the applicability of the Act was determined by reference to the date of the offence but if it was determined by reference to the date of the commencement of the inquiry or trial then. Article 20 (1) would not apply. The second reason assigned by the High Court is that the Investigating Officer may by delaying investigation and putting up of the accused for trial deny the accused benefit of the provisions of the Act and thereby defeat the object and purpose of the Act. Suffice it to say that such an occasion would C D E F G H

A not arise at all because before the commencement of the trial there would be some point of time when the accused shall have to be brought before the competent authority and that date would be determinative of the fact whether the accused was a juvenile or not. As to *Krishna Bhagwan's* case decided by Patna High Court suffice it to observe that the opening part of the judgment itself indicates that the question posed before us was not a question B arising before the High Court. The two questions considered and answered by the High Court were different. The High Court was seized of the issues as to what would be the impact of the event of the child ceasing to be so before the conclusion of the trial and the effect of the plea under the Juvenile Justice Act, 1986 having not been taken before the trial court and the trial C having proceeded oblivious of the provisions of the Act. During the course of discussion the Full Bench has observed that the juvenile is one who was below a certain age on the date of the commission of the offence but the observation is also based on an assumption and is certainly not a point deliberated upon before the High Court.

D All this exercise would have been avoided if only the Legislature would have taken care not to leave an ambiguity in the definition of juvenile and would have clearly specified the point of time by reference to which the age was to be determined to find a person a juvenile. The ambiguity can be resolved by taking into consideration the Preamble and the Statement of E Objects and Reasons. The Preamble suggests what the Act was intended to deal with. If the language used by Parliament is ambiguous the Court is permitted to look into the preamble for construing the provisions of an Act *(M/s. Burrakur Coal Co. Ltd. & M/s. East Indian Coal Co. Ltd.* v. *The Union of India and others,* AIR (1961) SC 954). A preamble of a statute has been said to be a good means of finding out its meaning and, as it were, the key F of understanding of it, said this Court in *A. Thangal Kunju Musaliar* v. *M. Venkatachalam Potti,* AIR (1958) SC 246. The Preamble is a key to un-lock the legislative intent. If the words employed in an enactment may spell a doubt as to their meaning it would be useful to so interpret the enactment as to harmonise it with the object which the Legislature had in its view. The G Legislative aims and objectives set out in the earlier part of this judgment go to show that this Legislation has been made for taking care of the care and custody of a juvenile during investigation, inquiry and trial, i.e., from a point of time when the juvenile is available to the law administration and justice delivery system; it does not make any provision for a person involved in an offence by reference to the date of its commission by him. The long title of H the Act too suggests that the content of the Act is the justice aspect relating

to juveniles.

We make it clear that we have not dealt with the provisions of Chapter VI dealing with special offences in respect of juveniles. Prima facie, we feel that the view which we have taken would create no difficulty even in assigning meaning to the term juvenile as occurring in Chapter VI(Sections 41 to 45) of the Act because a juvenile covered by any of these provisions is likely to fall within the definition of neglected juvenile as defined in clause (l) of Section 2 who shall also have to be dealt with by a Juvenile Board under Chapter III of the Act and the view taken by us would hold the field there as well. However, we express no opinion on the scope of Chapter VI of the Act and leave that aspect to be taken care of in a suitable case. At any rate in the present context we need not vex our mind on that aspect. Section 2 which defines 'juvenile' and 'neglected juvenile' itself begins by saying that the words defined therein would have the assigned meaning 'unless the context otherwise requires'. So far as the present context is concerned we are clear in our mind that the crucial date for determining the question whether a person is juvenile is the date when he is brought before the competent authority.

So far as the finding regarding the age of the appellant is concerned it is based on appreciation of evidence and arrived at after taking into consideration of the material available on record and valid reasons having been assigned for it. The finding arrived at by the learned A.C.J.M. has been maintained by the Sessions Court in appeal and the High Court in revision. We find no case having been made out for interfering therewith.

For the foregoing reasons the appeal is dismissed.

V.S.S. Appeal dismissed.