IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1446 of 2022

Arising Out of PS. Case No.-56 Year-1997 Thana- SANGRAMPUR District- Munger

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Niranjan Yadav Son Of Raso Yadav, Resident Of Village- Chhoti Khadui, P.S- Sangrampur, Dist- Munger

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan, Advocate

Ms. Astha Ananya, Advocate

For the State : Mr. Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
Date : 10-05-2024

Present Cr. Appeal SJ No. 1446 of 2022 has been preferred against the impugned judgment and order dated 28.02.2022 and 05.03.2022 passed by Addl. Sessions Judge-1, Munger, in Sessions Trial No. 31 of 2004 whereby the Appellant was found guilty of offence punishable under section 307 and 323 of the Indian Penal Code and Section 27 of the Arms Act and he was sentenced to undergo rigorous imprisonment for ten

years with fine of Rs. 2,000/- and in case of default to pay the fine, additional simple imprisonment for 3 months for the offence under Section 307 of the Indian Penal Code and simple imprisonment of one year under Section 323 of the Indian Penal Code and fine of Rs. 1,000/- and in case of default to pay the fine, additional simple imprisonment for one month.

2. The prosecution story, as emerging from the *Fardbeyan* of informant, in brief, is that on 09.05.1997 at 7:00 A.M. while the informant's aunt Janki Devi was returning from her agricultural field after spraying ash on crops and when she reached near the house of Ambika Yadav, he raised the slogan of Jai Bajrangwali to which she protested and a quarrel took place in between them and the accused persons came and surrounded her and tried to assault her but he rescued her and ran towards the house but Ambika Yadav and Niranjan Yadav started firing hitting over his right hand, left side of abdomen and left leg. His brother Girish Yadav who came to rescue his mother was also assaulted with bricks causing injury over his eyes and both of them were taken to Sangrampur hospital where he was being treated. Bullet of gun fired by Niranjan Yadav hit him and Raso Yadav was asking the accused persons not to leave them alive.

3. The aforesaid Sessions Trial No. 31 of 2004 arises

out of Sangrampur P.S. Case No. 56 of 1997 dated 09.05.1997 registered for the offence punishable under Sections 341, 323, 324, 337, 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. This F.I.R. was lodged on the basis of the fardbeyan of the informant one Shankar Yadav against seven accused persons namely, Ambika Yadav, Rasho Yadav, Mogal Yadav @ Manoranjan Yadav, Niranjan Yadav (who is Appellant herein), Pappu Yadav, Bahadur Yadav and Naujodhi Yadav.

4. Subsequent to lodging of the F.I.R., investigation started and charge-sheet bearing No. 41 of 1998 dated 13.08.1998 was submitted against Ambika Yadav, Rasho Yadav, Manoranjan Yadav and Naujodhi Yadav for offences punishable under Sections 147, 148, 149, 341, 323, 337, 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. Supplementary charge-sheet bearing No. 106 of 1998 dated 30.11.1998 was also filed against three accused, namely, Niranjan Yadav (Appellant), Pappu Yadav and Bahadur Yadav for offence punishable under Sections 147, 148, 149, 341, 323, 324, 337, 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

5. Subsequently, after cognizance of the offence, the

case was committed to the Court of Sessions and charge under Sections 323, 324, 337, 341 of the Indian Penal Code and Section 27 of the Arms Act were framed against all the Accused persons, which they pleaded not guilty and claimed to be tried. Hence, trial started.

6. During the trial, following six witnesses were examined:-

(i) P.W.1- Shanker Yadav (informant)

(ii) P.W.2- Raj Kumar Yadav

(iii) P.W.3- Dashrath Yadav

(iv) P.W.4- Rajdhari Yadav

(v) P.W.5- Chunni Yadav

(vi) P.W.6- Dr. Vijay Kumar Gupta (Medical Officer)

7. The Prosecution has also exhibited the following documents during the trial:

(i) Ext.-1- Signature of Informant on Fardbeyan

(ii) Ext.-2- Injury report prepared by Dr. Vijay Kr. Gupta.

8. After closure of the prosecution evidence, the Accused persons were also examined under Section 313 of Cr.P.C offering them opportunity to explain the incriminating circumstances.

9. No evidence was led by the Accused persons in their defence.

10. Ld. Trial Court heard both the parties. Considering the submissions of the parties and as per evidence on record, only Appellant was found guilty under Section 307 and 323 of the Indian Penal Code and Section 27 of the Arms Act and was accordingly sentenced. Other co-accused were acquitted of all the charges giving benefit of doubts. Hence, the present appeal has been preferred by the sole Appellant, namely, Niranjan Yadav.

11. It is pertinent to note that the Appellant did not take plea of his juvenility during the trial. It is during the pendency of the present appeal, the Appellant has taken plea of juvenility by filing I.A. No. 01 of 2003. Consequently, this Court vide order dated 27.09.2023 directed the Trial Court/Juvenile Justice Board to conduct inquiry into the juvenility of the Appellant and send report.

12. In pursuance of the said direction, report has been received from Principal Magistrate, Juvenile Justice Board, Munger, as per which the Appellant has been found to be juvenile being below 18 years of age on the date of occurrence on the basis of Matriculation certificate issued by Bihar School

Examination Board, as per which the date of birth of the Appellant is 1st of January, 1980, and the alleged date of occurrence is 09.05.1997. As such, the Appellant was found to be 17 years 04 months and 08 days old on the date of alleged occurrence.

13. I heard Ld. counsel for the Appellant and Ld. A.P.P. for the State.

14. Ld. Counsel for the Appellant submits that the alleged occurrence has taken place on 09.05.1997 and the sole Appellant was 17 years 04 months and 08 days old on the date of the alleged occurrence and undisputedly he has been found to be juvenile by the Juvenile Justice Board as transpires from the report received by this Court in pursuance of the order dated 27.09.2023. He further submits that at the time of the alleged occurrence, the Juvenile Justice Act, 1986 was in operation and as per the Act of 1986, juvenility of a boy-Accused was only up to 16th years of age. But the Act of 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000 and as per its provisions, the Act of 2000 was operative retrospectively, particularly after its amendment in the year 2006 and the Appellant, who was below 18 years of age at the time of the alleged occurrence, is entitled to get all the benefits as

provided to a juvenile in conflict with the law under the Act of 2000. He further submits that the Act of 2000 has been repealed in 2015 but the new Act of 2015 is not operational retrospectively because the Act of 2015 protects and affirms the application of the Act of 2000 to all the pending proceedings, and hence, the Act of 2015 is not applicable in pending cases which were earlier governed by the Act of 2000. He further submits that as per the Act of 2000, the impugned judgment of conviction and order of sentence are liable to be quashed and set aside without going into the merits of the case because the Appellant has already remained in custody for over three years i.e. from 03.04.2003 to 03.05.2004 during trial and since 28.02.2020 till date after conviction and as per Sections 15 and 16 of the Act of 2000, a juvenile in conflict with law can not be put in detention for more than three years. Hence, he submits that the impugned judgment and order are not sustainable in the eye of law and, accordingly, they are liable to be quashed and set aside.

15. He further submits that the Appellant could not raise the plea of juvenility before Ld. Trial Court on account of ignorance but the law permits him to raise his juvenility at any stage of the criminal proceeding even during pendency of the

Appeal.

16. He refers to and relies upon the relevant statutory provisions of the Juvenile Justice Act, 2000 and **Ashok Kumar Mehra v. State of Punjab, (2019) 6 SCC 132.**

17. However, Ld. APP for the State submits that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence. Hence, the Appeal is liable to be dismissed.

18. At the outset, it is pertinent to note that at the time of the alleged occurrence, the Juvenile Justice Act, 1986 was in operation. Hence, the Appellant was governed by the Act of 1986. However, the Juvenile Justice Act, 1986 was repealed by the Juvenile Justice Act of 2000 which came into effect from 01.04.2001. However, as per Section 20, the Act of 2000, as stands after amendment in 2006, clearly provides for application of the Act of 2000 in all pending cases which were earlier governed by the Juvenile Justice Act of 1986. The application of the Act is not only in pending trial proceedings, but even in pending revisional and appellate proceedings. The Juvenile Justice Act of 2000 was again repealed in 2015 by enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, but the Act of 2015 is not applicable in pending cases which

were earlier governed by Juvenile Justice Act of 2000, because Section 25 of the Act of 2015 protects and affirms the application of the Juvenile Justice Act of 2000 in the pending cases. As per Section 25 of the Act of 2015, notwithstanding anything contained in the Act of 2015, all the 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 are required to be continued in that Board or Court as if the Act of 2015 had not been enacted. The word “proceedings” includes not only trial proceedings but even revisional and appellate proceedings. Section 25 of 2015 reads as follows:

> **“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.”

19. In this context, it would relevant to refer to **Satya Deo Vs. State of UP, (2000) 10 SCC 555** wherein **Hon’ble Supreme Court** has clearly held that in view of Section 25 of the Act of 2015, the Act is not applicable to proceedings relating to juvenile in conflict with law which were pending on the date of commencement of the new Act. The relevant para is as

follows:

> " 23. Section 25 is a non obstante clause which applies to all proceedings in respect of a child ……... Thus, the use of the word "any" before the Board or court in Section 25 of the 2015 Act, would mean and include any court including the appellate court or a court before which the revision petition is pending. ……. Further, Section 25 of the 2015 Act applies to proceedings before the Board or the court and as noticed above, it would include any court, including the appellate court or the court where the revision petition is pending.
> 24. …….. Since the 2015 Act protects and affirms the application of the 2000 Act to all pending proceedings, we do not read that the legislative intent of the 2015 Act is to the contrary, that is, to apply the 2015 Act to all pending proceedings.
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> ……...……...
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> 26. ……... In terms of Section 25 of the 2015 Act, the 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced."

20. As such, it is the Juvenile Justice Act of 2000 which is applicable to the facts and circumstances of the present case.

21. Now coming to the statutory provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as it stands after amendment in the year 2006, it is found that as per Section 2(k) and 2(l) of the Act of 2000, a juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of such offence and undisputedly the Appellant is juvenile in the terms of Act of 2000, because he is

17 years 04 months and 08 days old on the alleged date of occurrence and he is entitled to all benefits and protections as provided in the Act of 2000.

22. As per Section 7A of the Act of 2000, the claim of juvenility may be raised before any Court at any stage of the proceeding and such claim is required to be determined in terms of the provisions of the Act and rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act. As such, there is no illegality or infirmity in raising claim of juvenility by the Appellant for the first time during pendency of this appeal. Section 7A reads as follows:

> **"7A. Procedure to be followed when claim of juvenility is raised before any Court.-** (1)Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:
>
> Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
>
> (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section(1), it shall forward the juvenile to the Board for passing

appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

(Emphasis Supplied)

23. Section 20 of the Act of 2000 which provides for applicability of the Act of 2000 in pending cases 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."
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> (Emphasis Supplied)

24. Section 19 of the Act of 2000 provides for removal of disqualification attaching to conviction of any juvenile in conflict with law. This Section reads as follows:

> **“Section 19. Removal of disqualification attaching to conviction. -** “(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.(2)The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.”

25. Section 49 which deals with presumption and determination of age reads as follows:

> **“49.Presumption and determination of age.—**
> (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.
> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

26. Section 15 of the Act of 2000 provides for the orders that may be passed regarding juvenile in conflict with law, whereas Section 16 of the Act provides for orders that may not be passed against such juvenile. The conjoined reading of these two Sections, particularly Section 15 (1) (g) and Proviso

to Section 16 clearly shows that the maximum period of detention of a juvenile in conflict with law is three years. As such, any order directing detention of such juvenile for a period of above three years is liable to be quashed and set aside.

27. Now, it is also relevant to refer to some judgments of Hon'ble Supreme Court which have direct bearing on this case in the given facts and circumstances.

28. In **Hari Ram Vs. State of Rajasthan, (2009) 13 SCC 211 Hon'ble Supreme Court** has observed as follows:

> "38……The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.
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> 39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

.....

49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder which includes the definition of “juvenile” in Sections 2(k) and 2(l) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act.

……..

57. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals.

…….

67. Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(*k*) had always been in existence even during the operation of the 1986 Act.

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

29. Hon'ble Supreme Court in **Daya Nand Vs. State of Haryana, (2011) 2 SCC 224** has again observed as follows:

> "9. In the Juvenile Justice Act, 1986, a "juvenile" was defined under Section 2(h) to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. On the basis of the finding of the Sessions Judge that on the date of occurrence, the appellant was over 16 years of age, he did not come within the definition of "juvenile" under the 1986 Act.
> 10. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on 1-4-2001. The 2000 Act defined "juvenile or child" in Section 2(k) to mean a person who has not completed eighteen 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."

30. In **Abuzar Hossain v. State of W.B., (2012) 10 SCC 489, Hon'ble Supreme Court** has observed as follows:

> " 28. The amendment in the 2000 Act by the Amendment Act, 2006, particularly, introduction of Section 7-A and subsequent introduction of Rule 12 in the 2007 Rules, was a sequel to the Constitution Bench decision of this Court in **Pratap Singh v. State of Jharkhand** [(2005) 3 SCC 551 : In **Hari Ram** [(2009) 13 SCC 211 , a two-Judge Bench of this Court extensively considered the scheme of the 2000 Act, as amended by the 2006 Amendment Act.
> ……..
> 39. Now, we summarise the position which is as under:
> 39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal

of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.
39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."

31. In **Abdul Razzaq Vs. State of U.P., (2015) 15 SCC 637, Hon'ble Supreme Court** has observed as follows:

" 9. The legal position on the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time. Reference may be made to Sections 7-A and 20 of the Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ……...
10. The above provisions clearly show that even if a person was not entitled to the benefit of juvenilities under the 1986 Act or the present Act prior to its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be claimed even if a matter has been finally decided, as in the present case."

32. Hon'ble Supreme Court in the case of **Raju Vs. State of Haryana, (2019) 14 SCC 401** has held as follows:-

" 10**.** It is by now well settled, as was held in *Hari Ram* v. *State of Rajasthan* , (2009) 13 SCC 211 , that in light of Sections 2(*k*), 2(*l*), 7-A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act …. It is

equally well settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7-A of the 2000 Act….

11**.** In light of the above legal position, it is evident that the appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the trial court, in light of Section 7-A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the appellant.

……..

27. [Ed.: Para 27 corrected vide Official Corrigendum No. F.3/Ed.B.J./10/2019 dated 25-2-2019.] . The criminal appeal hereby stands allowed and the order [*Raju* v. *State of Haryana*, 2011 SCC OnLine P&H 10820] of the High Court affirming the conviction and sentence of the appellant under Section 376(2)(*g*) IPC is set aside. Seeing that the appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1)(*g*) of the 2000 Act, and since the appellant has already been enlarged on bail by virtue of the order of the Court dated 9-5-2014 [*Raju* v. *State of Haryana*, 2014 SCC OnLine SC 1744], he need not be taken into custody. His bail bonds stand discharged and all proceedings against him, so far as they relate to the present case, stand terminated."

33. Hon'ble Supreme Court in the case of **Ude Singh v. State of Haryana, (2019) 17 SCC 301** has held as under:-

" 10**.** Having heard the learned counsel for the parties and having examined the record with reference to the law applicable, we are clearly of the view that so far as

Appellant 2-Accused 3 is concerned, he is entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the 2000 Act) and the proceedings qua him are required to be terminated.

.....

26. For what has been discussed hereinabove and having examined the matter in its totality, we find no reason to consider any interference in the impugned judgment and order dated 5-5-2008 [*Hem Karan* v. *State of Haryana*, 2008 SCC OnLine P&H 659] in relation to Appellants 1 and 3.

27. Accordingly and in view of the above, this appeal is partly allowed to the extent it relates to Appellant 2; the impugned judgment and order of the High Court affirming his conviction are set aside; and the proceedings in his relation stand terminated. However, the appeal stands dismissed in relation to the other appellants, who shall be required to serve out the remaining part of sentence awarded by the High Court."

34. Hon'ble Supreme Court in the case of Ashok Kumar Mehra v. State of Punjab, (2019) 6 SCC 132 has held as under:-

" 9. When we examine the facts of the case of Appellant 2 in the light of law laid down in *Raju* [*Raju* v. *State of Haryana*, (2019) 14 SCC 401] , we find that Appellant 2 was born on 14-6-1980 whereas the date of commission of the offence is 4-1-1998.

10. It is, therefore, an admitted fact that Appellant 2 was a juvenile (he was below the age of 18 years i.e. he was 17 years and 5 months) on the date of the commission of the offence (4-1-1998). In other words, Appellant 2 had not completed the age of 18 years on the date of commission of the offence i.e. on 4-1-1998.

11. Though this fact was neither brought to the notice of the Sessions Judge and nor the High Court and was brought to the notice of this Court for the first time by Appellant 2 in this appeal, yet in the light of law laid down by this Court in several decisions referred to in para 10 of the decision in *Raju* [*Raju* v. *State of Haryana*, (2019) 14 SCC 401] , Appellant 2 is entitled to raise this plea even in this appeal.

……...

14. 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* [*Raju* v. *State of Haryana*, (2019) 14 SCC 401] without going into the merits of the case and passing any other consequential order in that regard.

15. The appeal of Appellant 2 is accordingly allowed. The impugned order [*State of Punjab* v. *Ashok Kumar Mehra*, CRA-D No. 681-DBA of 2000 and Criminal Revision No. 1242 of 2000, order dated 21-7-2008 (P&H)] qua Appellant 2 is set aside."

35. Hon'ble Supreme Court in **Satya Deo Case (Supra)** has also held as follows:

" 9. **Section 20** of the 2000 Act, which provides a special provision in respect of pending cases, post the amendment vide Act 33 of 2006,……..

10. Section 20 is a special provision with respect to pending cases and begins with a limited non obstante or overriding clause notwithstanding anything contained in the 2000 Act. Legislative intent clearly expressed states that all proceedings in respect of a juvenile pending in any court on the date on which the 2000 Act came into force shall continue before that court as if the 2000 Act had not been passed. Though the proceedings are to continue before the court, the section states that if the court comes to a finding that a juvenile has committed the offence, it shall record the finding but instead of passing an order of sentence, forward the juvenile to the Juvenile Justice Board ("the Board") which shall then pass orders in accordance with the provisions of the 2000 Act, as if the Board itself had conducted an inquiry and was satisfied that the juvenile had committed the offence. The proviso, however, states that the Board, for any adequate and special reasons, can review the case and pass appropriate order in the interest of the juvenile.

11. The **Explanation** added to Section 20 vide Act 33 of 2006, which again is of significant importance, states

that the court where “the proceedings” are pending “at any stage” shall determine the question of juvenility of the accused. The expression “all pending cases” includes not only trial but even subsequent proceedings by way of appeal, revision, etc. or any other criminal proceedings. Lastly, the 2000 Act applies even to cases where the accused was a juvenile on the date of commission of the offence, but had ceased to be a juvenile on or before the date of commencement of the 2000 Act. Even in such cases, provisions of the 2000 Act are to apply as if these provisions were in force for all purposes and at all material time when the offence was committed

12. Thus, in respect of pending cases, Section 20 authoritatively commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence. The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the provisions of the 2000 Act.

13. By Amendment Act 33 of 2006, Section 7-A was inserted in the 2000 Act setting out the procedure to be followed by the court to determine the claim of juvenility. Section 7-A, which came into effect on 22-8-2006, …..

14. The proviso of Section 7-A is important for our purpose as it states that the claim of juvenility may be raised before “any court” “at any stage”, even after the final disposal of the case. When such claim is made, it shall be determined in terms of the provisions of the 2000 Act and the Rules framed thereunder, even when the accused had ceased to be a juvenile on or before commencement of the 2000 Act. Thus, it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 1-4-2001. He would be entitled to benefit of the 2000 Act.”

36. **Hon’ble Supreme Court** vide order dated 29.11.2021 in **Ashok Vs. State of Madhya Pradesh (Special**

Leave to (Crl) No. 643/2020), held as follows :

"The incident which led to the conviction of the petitioner, took place on 26.07.1997. The petitioner claims that the petitioner was born on 05.01.1981. The petitioner was, therefore, approximately 16 years and 7 months old on the date of the incident.

In this Court, the petitioner has for the first time contended that he was a juvenile on the date of the incident. His conviction and sentence are, therefore, liable to be set-aside. The claim of juvenility was not raised in the High Court.

……..

The Juvenile Justice Act, 1986, which was in force on the date of commission of the offence as also the date of the judgment and order of conviction and sentence by the Sessions Court was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act of 2000 received the assent of the President of India on 30.12.2000 and came into force on 01.04.2001. The Act of 2000 defined juvenile in conflict with the law to mean a juvenile, who was alleged to have committed an offence and had not completed 18th year of age as on the date of commission of such an offence.

Under the 1986 Act, the age of juvenility was upto the 16th year.

Section 7A of the 2000 Act as inserted by Act 33 of 2006 with effect from 22.08.2006 …..

The claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to 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.

Even though the offence in this case may have been committed before the enactment of the Act of 2000, the petitioner is entitled to the benefit of juvenility under Section 7A of the Act of 2000, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence.

……...

The 2000 Act has been repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. …….

Considering that the Trial Court has recorded the age of the petitioner as 16 years and odd, and has been in

> actual custody in excess of three years, which is the maximum for a juvenile,….”

37. In the aforesaid **Special Leave to Appeal (Crl) No. 643/2020** A**shok Vs. State of Madhya Pradesh, Hon’ble Court** had directed the Sessions Court to examine the claim of the Petitioner for juvenility in accordance with law and submit a report. The required report was received from the Sessions Court. The Petitioner was found to be Juvenile and hence, Hon’ble Supreme Court vide order dated 29.08.2022 has allowed the SLP granting leave to Appeal and the Appeal was allowed setting aside the conviction and sentencing order.

38. Now coming back to the case on hand, the Appellant is undisputedly juvenile on the alleged date of occurrence as per inquiry Report of the Juvenile Justice Board as made in pursuance of the order of this Court. It further transpires that the Appellant Juvenile has already undergone imprisonment for over three years. Hence, the impugned judgment of conviction and the order of Sentence is liable to be quashed and set aside without going into the merits of the case.

39. Accordingly, the appeal is allowed setting aside the impugned judgment of conviction and sentencing order dated 28.02.2022 and 05.03.2022 respectively passed by Ld.

Addl. Sessions Judge-1 Munger, in Sessions Trial No. 31 of 2004 arising out Sangrampur P.S. Case No. 56 of 1997.

40. The Appellant is in Jail. Hence, he is directed to be released forthwith, if he is not required in any other case.

(Jitendra Kumar, J.)

S.Ali/Chandan/Rav
ishankar/Shoaib

AFR/NAFR	AFR
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