

DAYA NAND

v.

STATE OF HARYANA

(Criminal Appeal No. 30 of 2011)

JANUARY 7, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000: s.2(k), 2(1), 7-A, 20 and 49 – Determination of juvenility – Held: All persons below the age of 18 years on the date of commission of offence would be treated as juveniles, even if the claim of juvenility is raised after they have attained the age of 18 years on or before the date of commencement of the 2000 Act and were undergoing sentence upon being convicted – Accordingly, a juvenile who has not completed 18 years on the date of commission of the offence is entitled to the benefits of the 2000 Act, as if the provisions of s.2(k) had always been in existence even during the operation of the 1986 Act – In the instant case, appellant was convicted u/s.376 r/w s.511, IPC – His age at the time of commission of offence was about 16 years, therefore, he is held to be a juvenile, within the meaning of s.2(l) of the amended 2000 Act – He cannot be kept in prison to undergo the sentence – The sentence imposed is set aside and he is directed to be released from prison – He is further directed to be produced before the Juvenile Justice Board, for passing appropriate orders in accordance with the provisions of 2000 Act – Juvenile Justice Act, 1986 – s.2(h) – Juvenile Justice (Care and Protection of Children) Rules 2007 – rr.12 and 98 – Penal Code, 1860 – s.376 r/w s.511.

The appellant was convicted under Section 376 r.w. Section 511, IPC, however, his plea of juvenility was accepted by the trial court. The Session Court reversed the findings as regards the juvenility of the appellant. The

A High court upheld the order of the Session Court. In the instant appeal, the appellant again raised the plea of juvenility.

Disposing of the appeal, the Court

B HELD: 1.1. On the date of occurrence i.e. 2.2.1998, the age of the appellant was 16 years 5 months and 19 days. 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
 C the age of 18 years. On the basis of the finding of the Session Court 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. The Juvenile Justice Act, 1986 was replaced by the Juvenile
 D Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined 'juvenile or child' in section 2(k) to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986.
 E Section 20 of 2000 Act 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
 F Act) and consequently who was being tried not before a juvenile court but a regular court. [Paras 9, 10 and 11] [179-E-H; 180-A-B]

1.2. A Constitution Bench of this Court held in **Pratap Singh* case that section 20 of the 2000 Act would apply
 G only to cases in which the accused was below 18 years of age on April 1, 2001, the date on which the 2000 Act came into force but it would have no application in case the accused had crossed the age of 18 years on the date of coming into force of the 2000 Act. Applying the ratio
 H of **Pratap Singh* case, the appellant would not be entitled

to the protections and benefits of the provisions of the 2000 Act, since he was over 18 years of age on April 1, 2001, when the 2000 Act came into force. But the matter did not stop at that stage. After this Court's decision in *Pratap Singh* (and presumably as a result of that decision) a number of amendments of a very basic nature were introduced in the 2000 Act w.e.f. August 22, 2006 by Act 33 of 2006. The effect of the amendments in the 2000 Act were considered by this Court in ***Hari Ram case* wherein it was held that the Constitution Bench decision in **Pratap Singh's case* was no longer relevant since it was rendered under the unamended Act. It was held in ***Hari Ram case* that a conjoint reading of Sections 2(k), 2(1), 7-A, 20 and 49 of 2000 Act read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to April 1, 2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. Section 7A of 2000 Act made provision for the claim of juvenility to be raised before any court at any stage and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act. 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

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A 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 (i) 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. [Paras 12 to 14] [180-E-H; 183-F-H; 184-A-F]

***Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211 – Followed.*

C *Dharambir v. State (NCT of Delhi) and Anr. (2010) 5 SCC 344; Mohan Mali and Anr. v. State of M.P. AIR 2010 SC 1790 – relied on.*

D **Pratap Singh vs. State of Jharkhand and Anr. (2005) 3 SCC 551 – referred to.*

1.3. In view of the Juvenile Justice Act as it stood after the amendments introduced into it and following the decision in ***Hari Ram* and the later decisions the appellant cannot be kept in prison to undergo the sentence imposed by the Session Court and affirmed by the High Court. The sentence imposed against the appellant is set aside and he is directed to be released from prison. He is further directed to be produced before the Juvenile Justice Board, for passing appropriate orders in accordance with the provisions of the Juvenile Justice Act. [Para 16] [185-C-D]

Case Law Reference:

G	(2005) 3 SCC 551	Referred to	Para 12, 13
	(2009) 13 SCC 211	Followed	Para 14, 15, 16
	(2010) 5 SCC 344	Relied on	Para 15
	AIR 2010 SC 1790	Relied on	Para 15

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 30 of 2011.

From the Judgment and Order dated 15.10.2009 of the
High Court of Punjab and Haryana at Chandigarh in Criminal
Appeal No. 174-SB of 1999.

D.S. Bali, Shalu Sharma and Rajesh Sharma for the
Appellant.

Alok Sangwan (for Devashish Bharuka) for the
Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

2. The appellant stands convicted under section 376 read
with section 511 of the Penal Code and sentenced to rigorous
imprisonment for five years and a fine of Rs.2000/- with the
direction that in default of payment of fine he would undergo
rigorous imprisonment for a further period of two months.

3. According to the prosecution case, on February 2,
1998, at about 10.00 A.M., the prosecutrix had gone out to the
fields for relieving herself. There she was accosted by the
appellant. Seeing him take off his pants, the prosecutrix tried
to run away but the appellant caught hold of her and pulled her
down to the ground. The prosecutrix freed herself by biting on
the appellant's hand and ran towards her house. The appellant
chased her and again caught hold of her. He pulled her down
and grabbed her breasts and attempted to commit rape on her.
She resisted him and in their struggle some mustard crops
grown in the field were also damaged. On alarm raised by the
prosecutrix, her mother and uncle came to the spot and on
seeing them, the appellant ran away threatening the prosecutrix
that he would kill her in case she went to the police.

4. In support of its case, the prosecution examined the
mother of the prosecutrix as PW.1, the prosecutrix herself as

A PW.2 and two policemen connected with the investigation and a photographer who had taken pictures of the place of occurrence.

B 5. The Additional Sessions Judge, Narnaul, trying the offence, on a consideration of the evidence adduced before him, found and held that the charge against the appellant was fully proved and by judgment and order dated February 13/15, 1999, passed in Sessions Case No.39 of 6.10.1998, Sessions Trial No.1 of 1.2.1999 convicted and sentenced him, as noted above. Against the judgment and order passed by the trial court, the appellant preferred an appeal (Criminal Appeal No.174-SB of 1999) before the High Court of Punjab and Haryana at Chandigarh. The High Court dismissed the appeal by judgment and order dated October 15, 2009, maintaining the conviction and sentence awarded to the appellant.

D 6. So far as the question of the appellant's guilt is concerned, that seems to be amply established by the evidence adduced by the prosecution and there is no need to go into any further detail in that regard. What needs to be considered in this appeal is the appellant's plea based on juvenility.

E 7. From the judgment of the High Court coming under appeal, it appears that the plea of the appellant's juvenility was raised at an early stage of the proceedings and the Principal Magistrate, Juvenile Justice Court, Narnaul, by his order dated F March 20, 1998 had found that the appellant was a juvenile. Against the order of the Principal Magistrate, the State went in appeal and the learned Sessions Judge, Narnaul, reversed the findings of the Principal Magistrate, Juvenile Justice Court, observing that the date of birth of the appellant as recorded in the Deaths and Births Register maintained by the Registrar was G August 14, 1981 and reckoned on that basis, he was not a juvenile on February 2, 1998, the date of the occurrence. As a consequence, the appellant was tried not before a Juvenile Court, but before the Additional Sessions Judge, Narnaul.

H 8. The plea of juvenility was again raised in appeal, but

the High Court rejected it referring to the finding of the Sessions Judge on the matter and observing as follows:-

“Learned counsel for the appellant argued that the appellant was a juvenile at the time of occurrence and should have been tried by the Principal Magistrate, Juvenile Justice Court, Narnaul. However, after going through the records of the case, I do not find any merit in this argument. In his order dated 20.3.1998, the Principal Magistrate, Juvenile Justice Court, Narnaul, had held that the appellant was a juvenile. Against the order dated 20.3.1998, the State had gone in appeal and the learned Sessions Judge Narnaul, reversed the findings of the Principal Magistrate, Juvenile Justice Court, Narnaul by observing that the date of birth of the appellant was 14.8.1981 as mentioned in the Deaths and Births Register so maintained by the Registrar. Thus, on 2.2.1998, i.e. the date of occurrence, the appellant was not a juvenile.”

9. From the above it is evident that on the date of occurrence the age of the appellant was 16 years 5 months and 19 days.

10. 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.

11. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined ‘juvenile or child’ in section 2(k) to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in section 20 also contained a provision in regard to cases that

A 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. Section 20 (prior to
B its amendment in 2006) provided 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
C 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
D 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.”

12. The above quoted provision came up for consideration
E before a Constitution Bench of this Court in *Pratap Singh vs.*
State of Jharkhand and Anr., (2005) 3 SCC 551. In *Pratap*
Singh, this Court held that section 20 of the 2000 Act would
apply only to cases in which the accused was below 18 years
of age on April 1, 2001, the date on which the 2000 Act came
F into force but it would have no application in case the accused
had crossed the age of 18 years on the date of coming into
force of the 2000 Act.

13. Applying the ratio of the Constitution Bench decision,
the appellant would not be entitled to the protections and
G benefits of the provisions of the 2000 Act, since he was over
18 years of age on April 1, 2001, when the 2000 Act came into
force. But the matter did not stop at that stage. After this Court's
decision in *Pratap Singh* (and presumably as a result of that
decision) a number of amendments of a very basic nature were
H introduced in the 2000 Act w.e.f. August 22, 2006 by Act 33 of

2006. Some of the provisions incorporated in the 2000 Act by the 2006 amendment insofar as relevant for the present are reproduced below:

“1(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under any such law.

2(1) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

7(A) 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 recognized 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.

A 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
B 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
C 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
D 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
E determination of juvenility of such a juvenile shall be in
terms of clause (1) of section 2, even if the juvenile ceases
to be so on or before the date of commencement of this
Act and the provisions of this Act shall apply as if the said
provisions had been in force, for all purposes and at all
F material times when the alleged offence was committed.]

64. Juvenile in conflict with law undergoing sentence
at commencement of this Act. – In any area in which this
Act is brought into force, the State Government shall direct
that a juvenile in conflict with law who is undergoing any
G sentence of imprisonment at the commencement of this
Act, shall, in lieu of undergoing such sentence, be sent to
a special home or be kept in fit institution in such manner
as the State Government thinks fit for the remainder of the
period of the sentence; and the provisions of this Act shall
H apply to the juvenile as if he had been ordered by the

Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act:

Provided that the State Government or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation. – In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of Section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.”

14. The effect of the amendments in the 2000 Act were considered by this Court in *Hari Ram v. State of Rajasthan and Another* reported in (2009) 13 SCC 211. In *Hari Ram* this Court held that the Constitution Bench decision in *Pratap Singh's* case was no longer relevant since it was rendered under the unamended Act. In *Hari Ram* this Court held and observed as follows:

“59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(1), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as

A juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

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

D 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.

E 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.

G 70. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age. In view of Sections 2(k), 2(l) and 7A read with Section 20 of the said Act, the provisions

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thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile."

15. Later on, the decision in *Hari Ram* (supra) was followed by this Court in *Dharambir v. State (NCT of Delhi) and Another*, (2010) 5 SCC 344 and also in *Mohan Mali & Another v. State of M.P.*, AIR 2010 SC 1790.

16. In view of the Juvenile Justice Act as it stands after the amendments introduced into it and following the decision in *Hari Ram* and the later decisions the appellant can not be kept in prison to undergo the sentence imposed by the Additional Sessions Judge and affirmed by the High Court. The sentence imposed against the appellant is set aside and he is directed to be released from prison. He is further directed to be produced before the Juvenile Justice Board, Narnaul, for passing appropriate orders in accordance with the provisions of the Juvenile Justice Act.

17. The appeal is, thus, disposed of with the aforesaid observations and directions.

D.G.

Appeal disposed of.