

[2012] 7 S.C.R. 477

BABLA @ DINESH

v.

STATE OF UTTARAKHAND  
(Criminal Appeal No. 1349 of 2012)

SEPTEMBER 04, 2012

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

*JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000:*

*ss. 2(k) and 15 - Plea of juvenility - Held: Can be raised even before Supreme Court for the first time - The report of Addl. Sessions Judge concluding that the appellant was aged about 10-15 years on the date of commission of the offence (i.e. 1.12.1991) is accepted - Appellant is, thus, juvenile within the expression u/s 2(h) of 1986 Act and s.2(k) of 2000 Act - Appellant has undergone the actual period of more than 3 years out of the maximum period prescribed u/s 15 - While sustaining the conviction, the sentence awarded to him by courts below is set aside - Juvenile Justice Act, 1986 - s.2(h) - Juvenile Justice (Care and Protection of Children) Rules, 2007 - r.2 - Penal Code, 1860 - s.302/149.*

**The appellant, who was one of the accused before the trial court, was convicted and sentenced to imprisonment for life u/s 302/149 IPC. The High Court confirmed the judgment rejecting the plea of juvenility of the appellant on the ground that it was not raised before the trial court and no evidence was adduced in defence.**

**Partly allowing the appeal, the Court**

**HELD: 1.1 The High Court has erred in dismissing the appeal on the ground that no evidence was adduced and no suggestion was made to the witnesses regarding juvenility of the appellant during the trial. The issue of**

A raising the plea for determination of juvenility for the first time at the appellate stage is no more res integra. This Court in *Lakhan Lal's\** case, taking note of its previous decisions on this point has allowed such plea raised before this Court for the first time. [para 9] [481-F-G]

B *Lakhan Lal v. State of Bihar* 2011 (1) SCR 770 = (2011) 2 SCC 251; *Umesh Singh and Anr. v. State of Bihar*, (2000) 6 SCC 89; *Bhola Bhagat v. State of Bihar*, 1997 (4) Suppl. SCR 711 = (1997) 8 SCC 720; *Gopinath Ghosh v. State of W.P.* 1984 SCR 803 =1984 Supp SCC 228; and *Bhoop Ram v. State of U.P.* (1989) 3 SCC 1; and *Pradeep Kumar v. State of U.P.*, 1995 Supp(4) SCC 419 - relied on.

1.2 Pursuant to the directions issued by this Court, the Additional Sessions Judge has conducted inquiry by following the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Rules, 2007 and submitted his report dated 03.12.2011, wherein, it is concluded that the appellant was aged about 10-15 years on the date of the commission of the offence i.e. 1.12.1991. The report is accepted. Accordingly, this Court holds that the appellant was juvenile within the meaning of the expression u/s 2(h) of the Juvenile Justice Act, 1986 and s. 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder on the date of commission of the offence. The Jail Custody Certificate, produced by the appellant suggests that he has undergone the actual period of sentence of more than three years out of the maximum period prescribed u/s 15 of the Act. In the circumstance, while sustaining the conviction of the appellant, the sentence awarded to him by the trial court and confirmed by the High Court is set aside. [para7 and 12] [481-C-D; 483-F-G]

#### Case Law Reference:

H 2011 (1) SCR 770 relied on para 9

2000 (6) SCC 89	relied on	para 9	A
1997 (4) Suppl. SCR 711	relied on	para 9	
1984 SCR 803	relied on	para 9	
1989 (3) SCC 1	relied on	para 9	B
1995 (4) Suppl. SCC 419	relied on	para 9	

\* CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1349 of 2012.

From the Judgment & Order dated 21.07.2009 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 1481 of 2001 (Old No. 1852 of 1995). C

T.N. Singh, Vikas K. Singh, H.L. Srivastava for the Appellant. D

Mukesh Verma, (For Jatinder Kumar Bhatia) for the Respondent.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Leave granted. E

2. This appeal is directed against the judgment and order passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.1481 of 2001 dated 21.07.2009. By the impugned judgment, the High Court has confirmed the Order of conviction and sentence of the appellant passed by the Trial Court under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC'). F

3. The appellant was one of the accused before the Trial Court for the alleged offences punishable under Section 302 read with Sections 149 and 147 of the IPC. The Trial Court by its judgment and order dated 18.10.1995 in Sessions Trial No. 39 of 1992, convicted and sentenced the appellant for rigorous imprisonment of two years under Section 147 and imprisonment for life under Section 302 read with Section 149 G

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A IPC, both sentences to run concurrently. Aggrieved by the order so made, the appellant and others approached the High Court of Uttarakhand at Nainital by way of criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') on various grounds.

B 4. Before the High Court, apart from others, the learned  
 C counsel for appellant raised the contention that the appellant was juvenile on the date of the commission or occurrence of the offence, i.e. on 01.12.1991. The said contention was rejected by the High Court on the ground that it was not raised before the Trial Court and no evidence has been adduced in  
 D defence and no suggestion had been made to the witnesses during the trial and that the appellant admitted his age as 20 years at the time of recording his statement under Section 313 of the Cr. P.C.. In conclusion, the Court has observed:

D "11. Learned counsel for the appellants contended that  
 E appellants Gadha and Babla, were minors on the day of the incident. But no such suggestion was made to any of the witnesses nor is any evidence adduced in defence. Rather the accused / appellants Gadha and Babla have  
 F disclosed their age 20 years on the day when their statement under Section 313 Cr.P.C. were recorded also makes out the case that their age was more than 16 years on the day of the incident. It is pertinent to mention here that on the day of the incident, and during the trial, Juvenile  
 H Justice Act, 1986, was applicable to the cases of Juveniles and not Juvenile Justice (Care and Protection of Children) Act 2000."

G 5. After issuing notice to the opposite parties in the special leave petition, by our Order dated 18.04.2011, we had directed the learned Sessions Judge or his nominee to conduct an inquiry into the question of the age of the appellant on the date of commission of offence and to submit a report as envisaged under Rule 12 of the Juvenile Justice (Care and Protection of  
 H Children) Rules, 2007 (for short 'Rules, 2007).

6. Pursuant to the aforesaid direction, the inquiry report was submitted before this Court, but the same was not accepted, as it was merely based on the opinion of an individual doctor which was not in accordance with the procedure prescribed under Rule 12 of the Rules, 2007. Therefore, by our Order dated 01.11.2011, we had, once again, directed the learned Sessions Judge to conduct an inquiry as prescribed under Rule 12 of the Rules, 2007 and submit his report. A  
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7. Pursuant to the directions issued by us, the learned Additional Sessions Judge has conducted inquiry by following the prescribed procedure under the Rules, 2007 and submitted his inquiry report dated 03.12.2011, wherein, it is concluded that the appellant was aged about 10-15 years on the date of the commission of the offence i.e. 01.12.1991. Therefore, the appellant is juvenile within the meaning of the expression under Section 2(h) of the Juvenile Justice Act, 1986 and Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000. C  
D

8. This report is not disputed by the learned counsel for the respondent-State. E

9. We have heard the learned counsel for the parties to the lis. We have also carefully perused the judgment and order passed by the High Court. We are of the opinion that the High Court has erred in dismissing the appeal on the ground that no evidence was adduced and no suggestion was made to the witnesses regarding juvenility of the appellant during the trial. In our opinion, the issue of raising the plea for determination of juvenility for the first time at the appellate stage is no more res integra. This Court in *Lakhan Lal v. State of Bihar*, (2011) 2 SCC 251, has allowed such plea raised before this Court for the first time and, taking note of its previous decisions on this point, has observed thus : F  
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"The fact remains that the issue as to whether the appellants were juvenile did not come up for consideration for whatever reason, before the Courts below. The question H

A is whether the same could be considered by this Court at  
 this stage of the proceedings. A somewhat similar  
 situation had arisen in *Umesh Singh and Anr. v. State of*  
*Bihar*, (2000) 6 SCC 89 wherein this Court relying upon  
 the earlier decisions in *Bhola Bhagat v. State of Bihar*,  
 B (1997) 8 SCC 720, *Gopinath Ghosh v. State of W.P.* 1984  
 Supp SCC 228 and *Bhoop Ram v. State of U.P.*, (1989)  
 3 SCC 1, while sustaining the conviction of the Appellant  
 therein under all the charges, held that the sentences  
 awarded to them need to be set aside. It was also a case  
 C where the appellant therein was aged below 18 years and  
 was a child for the purposes of the Bihar Children Act,  
 1970 on the date of the occurrence. The relevant  
 paragraph reads as under (*Umesh Singh case*, SCC,  
 pp.93-94, para 6) :

D "6. So far as Arvind Singh, appellant in Criminal  
 Appeal No. 659 of 1999 is concerned, his case stands on  
 a different footing. On the evidence on record, the learned  
 Counsel for the appellant, was not in a position to point  
 out any infirmity in the conviction recorded by the trial court  
 as affirmed by the appellate court. The only contention put  
 E forward before the court is that the appellant is born on 1-  
 1-67 while the date of the incident is 14-15-1980 and on  
 that date he was hardly 13 years old. We called for report  
 of experts being placed before the court as to the age of  
 the appellant, Arvind Singh. The report made to the court  
 F clearly indicates that on the date of the incident he may  
 be 13 years old. This fact is also supported by the school  
 certificate as well as matriculation certificate produced  
 before this Court which indicate that his date of birth is 1-  
 1-1967. On this basis, the contention put forward before  
 G the court is that although the appellant is aged below 18  
 years and is a child for the purpose of the Bihar Children  
 Act, 1970 on the date of the occurrence, his trial having  
 been conducted along with other accused who are not  
 children is not in accordance with law. However, this  
 H

contention had not been raised either before the trial court or before the High Court. In such circumstances, this Court in *Bhola Bhagat v. State of Bihar*, 1997 (8) SCC 720, following the earlier decision in *Gopinath Ghosh v. State of West Bengal*, 1984 Supp. SCC 228 and *Bhoop Ram v. State of U.P.*, 1989 (3) SCC 1 and *Pradeep Kumar v. State of U.P.*, 1995 Supp(4) SCC 419, while sustaining that the sentences awarded to them need to be set aside. In view of the exhaustive discussion of the law on the matter in *Bhola Bhagat* case, we are obviated of the duty to examine the same but following the same, with respect, we pass similar orders in the present case. Conviction of the appellant Arvind Singh is confirmed but the sentence imposed upon him stands set aside. He is, therefore, set at liberty, if not required in any other case."

10. We are in respectful agreement with the view expressed by this Court in the aforesaid decision.

11. We have carefully perused the report dated 03.12.2011 of the learned Additional Sessions Judge. Since the report is made after holding due inquiry as required under the Act and the Rules, we accept the same. Accordingly, we hold that the appellant was juvenile, as envisaged under the Act and the Rules framed thereunder, on the date of commission of the offence.

12. The Jail Custody Certificate, produced by the appellant suggests that he has undergone the actual period of sentence of more than three years out of the maximum period prescribed under Section 15 of the Act. In the circumstance, while sustaining the conviction of the appellant for the aforesaid offences, the sentence awarded to him by the Trial Court and confirmed by the High Court is set aside. Accordingly, we direct that the appellant be released forthwith, if not required in any other case. The appeal is partly allowed.

R.P.

Appeal Partly allowed.