

SUBODH NATH AND ANR.

v.

STATE OF TRIPURA

(Criminal Appeal No. 1551 of 2007)

MARCH 19, 2013

[A.K. PATNAIK AND H. L. GOKHALE, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000 [as amended by Amendment Act of 2006] – s.7A; and proviso & Explanation to s.20 – Applicability of the Act – To offence committed prior to commencement of the Act – Held: In view of the provisions in ss.7A and 20, the Act would be applicable – In the instant case, the accused was below 18 years on the date of commission of the offence, and hence would be treated as juvenile under the provisions of the Act – Therefore, case qua the juvenile accused remitted to concerned Juvenile Justice Board – Penal Code, 1860 – s.302/34.

Penal Code, 1860 – s.302/s.34 – Prosecution under – Conviction by courts below – Held: Appellant No.1-accused is guilty of offence u/s.302 – Prosecution case is supported by eye-witness account corroborated by reliable evidence direct as well as circumstantial – Therefore, his conviction upheld.

Criminal Trial – Discrepancy in the version of witness – Effect of – Court not to discard the evidence on the ground of discrepancies, unless they are 'material discrepancies', so as to create reasonable doubt about the credibility of witnesses.

Motive – Relevance of – Held: Motive is relevant in case where prosecution seeks to prove guilt by circumstantial evidence – It becomes irrelevant if offence is proved by direct evidence.

A Appellants-accused were prosecuted for having killed one person. Prosecution case was supported by evidence of one eye-witness. Trial court convicted both the accused u/s. 302/34 IPC. High Court confirmed their conviction.

B In the instant appeal, it was contended that appellant No.2 was less than 18 years of age on the date of occurrence and hence should have been treated as a juvenile within the meaning of s.2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and that the provisions of Juvenile Justice Act, 1986 were not applicable. As regards appellant No.1, it was contended that conviction on the testimony of sole eye-witness (PW-13) was not correct because he was not reliable as he ran away from the place of occurrence and because his evidence was without any corroboration; that there was discrepancy in the evidence of PW-2 and PW-13; that there was no recovery of the weapon of offence and further that the motive to kill the deceased was also not proved.

E Allowing the appeal of appellant No.2 and dismissing that of appellant No.1, the Court

F HELD: 1. The accused is entitled to the benefit of the 2000 Act, as if the provisions of Section 2(k) thereof had always been in existence even during the operation of the Juvenile Justice Act, 1986 by virtue of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Amendment Act of 2006.

G Considering the provisions of Section 7A and 20 of the 2000 Act and considering that the appellant No.2 was below 18 years of age as per his birth certificate, the impugned judgment of the High Court qua the appellant No.2 is liable to be set aside and the case would be

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remitted to the concerned Juvenile Justice Board for disposal of his case in accordance with the provisions of the 2000 Act. [Para 10] [592-A-D] A

Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211: 2009 (7) SCR 623 – relied on. B

Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551: 2005(1) SCR 1019 – held inapplicable.

2.1. Appellant No.1 was guilty of the offence u/s. 302 IPC. It is not correct to say that the evidence of PW-13 was not reliable as he was a suspect and had ran away from the place of occurrence. As explained by PW-13 he left the place of occurrence because of his fear of the appellants who had threatened him with dire consequences if he disclosed the incident to anyone. The evidence of PW-13 is also supported by the evidence of PW-6. Moreover, the evidence of the Investigating Officer (PW-19) read with Inquest Report (Ext. P-2) prepared by him shows that there were injuries on the dead body of deceased caused by an axe and a gun. PW-19 has also stated that he recovered handle of the axe near the dead body of the deceased and he seized the handle of the axe after preparing a seizure list in presence of the witnesses. Thus, the evidence of PW-13 is corroborated by material particulars by reliable testimony, direct and circumstantial. [Para 12] [593-B-E] C D E F

2.2. Once the eye-witness account of PW-13 is found to be corroborated by material particulars and reliable, his evidence cannot be discarded only on the ground that there were some discrepancies in the evidence of PW-1, PW-2, PW-13 and PW-19. In the deposition of witnesses, there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition G

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A of the witnesses and the like. Unless, therefore, the discrepancies are “material discrepancies” so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. [Para 13] [593-F-H]

B *State of Rajasthan v. Smt. Kalki and Anr. (1981) 2 SCC 752: 1981 (3) SCR 504 – relied on.*

C 2.3. It is correct that the prosecution has not been able to establish the motive of appellant No.1 to kill the deceased but as there is direct evidence of the accused having committed the offence, motive becomes irrelevant. Motive becomes relevant as an additional circumstance in a case where prosecution seeks to prove the guilt by circumstantial evidence only. [Para 13] [594-A-B]

D *Badri v. State of Rajasthan (1976) 1 SCC 442: 1976 (2) SCR 339; Lallu Manjhi and Anr. v. State of Jharkhand AIR 2003 SC 854: 2003 (1) SCR 1; Suresh Chandra Bahri etc. v. State of Bihar AIR 1994 2420: 1994 (1) Suppl. SCR 483 –*
 E referred to.

Case Law Reference:

	1976 (2) SCR 339	referred to	Para 5
F	2003 (1) SCR 1	referred to	Para 5
	1994 (1) Suppl. SCR 483	referred to	Para 8
	2005 (1) SCR 1019	held inapplicable	Para 10
G	2009 (7) SCR 623	relied on	Para 10
	1981 (3) SCR 504	relied on	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1551 of 2007.

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From the Judgment & Order dated 08.06.2005 of the High Court of Gauhati at Agartala Bench in Criminal Appeal No. 22 of 2004. A

Lalit Chouhan, Somanadri Goud, Kshatrashal Raj, Abhishek Vinod Deshmukh (for Parekh & Co.) for the Appellants. B

Ritu Raj Biswas, Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 08.06.2005 of the Gauhati High Court, Agartala Bench, in Criminal Appeal No. 22 of 2004. C

2. The facts very briefly are that on 09.10.1998, Ashutosh took out his cows for grazing but did not return home till dusk and his cousin, Kripesh, along with others searched for Ashutosh but could not find him. On the next day (10.10.1998) at about 8.30 a.m., he again went out looking for Ashutosh and found his dead body with injuries lying in a jungle at Nalia Tilla. Kripesh then lodged an FIR at the Panisagar Police Station and the police registered a case and held an inquest over the dead body of the deceased. In course of the investigation, the police apprehended Pranajit, who was working as a labourer under Ashutosh and Kripesh, from District Cachar and brought him to Dharamnagar and during interrogation Pranajit disclosed that Ashutosh had been killed by the two appellants. The statement of Pranajit was also recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') and on completion of the investigation, the police filed charge-sheet against the appellants. D
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3. At the trial, the prosecution examined a total of 19 witnesses. Kripesh, the informant, was examined as PW-1, H

A Patal, the elder brother of Pranajit, was examined as PW-2 and he stated that PW-13 had disclosed to him that the appellants assaulted the deceased by an axe and a *lathi*. Pranajit was examined as PW-13 and he has stated that he had gone along with the deceased to graze cows at Nalia Tilla and the appellant
 B no.1 had dealt an axe blow on the deceased while the appellant no.2 dealt a *lathi* blow on him. The appellants did not produce any evidence in their defence. The trial court convicted the appellants under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and sentenced them to
 C imprisonment for life and a fine of Rs.5000/- each and in default, to undergo further imprisonment for a period of one year. The appellants filed Criminal Appeal No. 22 of 2004 before the High Court, but by the impugned judgment the High Court maintained the conviction and sentence and dismissed
 D the appeal.

4. Mr. Lalit Chauhan, learned counsel appearing for the appellants, submitted that on 09.10.1998 when the offence was alleged to have been committed, the appellant no.2, Paritosh,
 E was less than 18 years of age and was, therefore, a juvenile within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the 2000 Act'). He relied on the copy of the primary education certificate issued by the Teacher-in-charge of West Bilthai S.B. School,
 F Dharmānagar, Tripura (N), to show that the date of birth of the appellant no.2 was 28.05.1983. He submitted that accordingly his age was about 16 years on 09.10.1998, the date on which the offence was committed. He submitted that the trial court and the High Court, however, took the view that the provisions of
 G the 2000 Act would not apply to the offence which was committed on 09.10.1998 and instead the provisions of Juvenile Justice Act, 1986 (for short 'the 1986 Act') would apply and under the 1986 Act only a person who is shown to be less than 16 years of age at the time of the commission of the
 H offence is a juvenile and it was satisfactorily proved that the

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appellant no.2 was 16 years of age on the date of commission of the offence. He submitted that in *Hari Ram v. State of Rajasthan and Another* [(2009) 13 SCC 211], this Court has taken a view that all persons who were below the age of 18 years on the date of commission of the offence would have to be treated as juveniles by virtue of the 2000 Act as amended by the Amendment Act of 2006. He submitted that, therefore, the appeal of appellant no.2 will have to be allowed and the impugned judgment of the High Court *qua* appellant no.2 will have to be set aside.

5. Regarding the appeal of the appellant no.1, Mr. Chauhan submitted that his conviction is based on the sole testimony of PW-13, but PW-13 ought not to have been believed because he had ran away from the place of occurrence in North Tripura district, where he was working as a labourer, to the Cachar district and he was thus a suspect. He cited the decision of this Court in *Badri v. State of Rajasthan* [(1976) 1 SCC 442] in which it has been held that in case of a witness who is neither wholly reliable nor whole unreliable, the Court must be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. He also relied on *Lallu Manjhi and Another v. State of Jharkhand* (AIR 2003 SC 854) in which similarly the need to look for corroboration where the evidence was neither wholly reliable nor wholly unreliable was again emphasized.

6. Mr. Chauhan next pointed out some discrepancies in the evidence of PW-2 and PW-13. He pointed out that PW-2 had stated in his evidence that PW-13 had told him that the appellant no.1 (Subodh) had restrained him and had threatened him if he disclosed it to anyone that he had dealt an axe blow on the deceased. PW-13, on the other hand, has not said that the appellant no.1 (Subodh) had restrained him and threatened him, but has only said that the appellant no.2 (Paritosh) ran after him. He also pointed out discrepancies in the evidence

A of PW-1 and PW-13. He submitted that while PW-1 has stated that PW-13 had accompanied him to search for the deceased, PW-13 had stated that he never accompanied PW-1 to search for the dead body of the deceased. He also pointed out some discrepancies in the evidence of PW-2 and PW-19, the
 B Investigation Officer. He finally submitted that in this case the weapons with which the deceased was alleged to have been killed by the appellants have not been recovered nor any motive of the appellants to kill the deceased proved. He argued that this is a clear case in which the appellants should have been
 C acquitted of the charge under Section 302 read with Section 34 of the IPC.

7. In reply, Mr. Rituraj Biswas, learned counsel appearing for the State of Tripura, relied on the decision of this Court in
 D *Pratap Singh v. State of Jharkhand and Another* [(2005) 3 SCC 551] to submit that the appellant no.2 was not protected by the 2000 Act and was liable to be punished for the offence under Section 302 read with Section 34 of the IPC being more than 16 years of age when the offence was committed. He
 E submitted that, therefore, this Court should not disturb the conviction of the appellant no.2 by the trial court as well as by the High Court only on the ground that he was entitled to the benefit of the 2000 Act.

F 8. Regarding the appellant no.1, Mr. Biswas submitted that it is not correct as contended by the learned counsel for the appellants that the weapons with which the deceased was killed by the appellants have not been recovered. He referred
 G to the evidence of PW-19, the Investigating Officer, as well as the inquest report, Ext. P-2, to show that pursuant to the disclosure made by the appellants, one blood stained wooden stick measuring three feet in length was found at a distance of two feet to the left side of the deceased's head, a wooden stick of about two and half feet was found nearby the place where
 H the head of the deceased was lying and one *takkal dao* was

lying at a distance of two feet to the right side of the place where the deceased's head was lying. Mr. Biswas submitted that PW-13 had clearly stated that on the date of the incident, he and the deceased went to graze cows at about 2.00 p.m. in the rubber garden and at about 4.00 p.m., the appellants went there and they were armed with an axe, *lathi* and gun and that while appellant no.1 dealt an axe blow on the deceased, appellant no.2 started assaulting him with a stick and thereafter the appellant no.1 took a gun from the jungle and shot the deceased. He submitted that there is some corroboration of what PW-13 has stated before the court by PW-6 who has stated in his evidence that on the date of the incident at about 1.30 p.m. he found the deceased and the appellants grazing cows in Nallia Tilla. He submitted that PW-6 also identified the appellants in the court. He cited the decision of this Court in *Suresh Chandra Bahri, etc. v. State of Bihar* (AIR 1994 2420) in which it has been held that when a confessional statement of disclosure made by the accused is confirmed by recovery of incriminating articles, there is a reason to believe that the disclosure statement was true and the evidence led in that behalf is also worthy of credence.

9. We have considered the submissions of the learned counsel for the parties with regard to the appeal of the appellant no.2 and we find that the High Court has held in *Para 28* of the impugned judgment that Paritosh (appellant no.2) is satisfactorily shown to be 16 years of age at the time of the alleged occurrence, i.e., on 09.10.1998, and he was not a juvenile under the 1986 Act. The questions that we have to decide in the appeal of the appellant no.2 are whether the appellant no.2 was entitled to claim that he was a juvenile as defined in the 2000 Act, and whether his claim to juvenility has to be decided in accordance with the provisions of the 2000 Act, as amended from time to time and the rules made thereunder. Sections 7A and 20 of the 2000 Act, which are relevant for deciding these questions are quoted hereinbelow:

A “Section 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
B 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:

C 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
D 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
E orders and the sentence, if any, passed by a court shall
be deemed to have no effect.

Section 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
F 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
G Act that a juvenile has committed the offence.

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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.”

10. Section 7A and the proviso and the Explanation in the aforesaid Section 20 quoted above were inserted by the Amendment Act of 2006, w.e.f. 22.08.2006 and before the insertion of the Section 7A and proviso and the Explanation in Section 20, this Court delivered the judgment in *Pratap Singh v. State of Jharkhand and Another* (supra) on 12.02.2005 cited by Mr. Biswas. The judgment of this Court in *Pratap Singh v. State of Jharkhand and Another* (supra) therefore is of no assistance to decide this matter. After the insertion of Section 7A and the proviso and explanation in Section 20 in the 2000 Act, this Court delivered the judgment in *Hari Ram v. State of Rajasthan and Another* (supra). The facts of this case were that the accused committed the offences punishable under Sections 148, 302, 149, 325/149 and 323/149 of the IPC on 30.11.1998. The date of birth of the accused was 17.10.1982. The medical examination of the accused conducted by the Medical Board indicated his age to be between 16-17 years when he committed the offence on 30.11.1998. The High Court held that on the date of the incident the accused was about 16 years of age and was not a juvenile under the 2000 Act and the provisions of 2000 Act were, therefore, not applicable to

A him. This Court set aside the order of the High Court and held
 that the accused had not attained the age of 18 years on the
 date of the commission of the offence and was entitled to the
 benefit of the 2000 Act, as if the provisions of Section 2(k)
 thereof had always been in existence even during the operation
 B of the 1986 Act by virtue of Section 20 of the 2000 Act as
 amended by the Amendment Act of 2006 and accordingly
 remitted the case of the accused to the Juvenile Justice Board,
 Ajmer, for disposal in accordance with law. Considering the
 aforesaid judgment of this Court in *Hari Ram v. State of*
 C *Rajasthan and Another* (supra) and the provisions of Section
 7A and 20 of the 2000 Act and considering that the appellant
 no.2 is below 18 years of age as per his birth certificate, the
 impugned judgment of the High Court qua the appellant no.2
 will have to be set aside and the case will have to be remitted
 D to the concerned Juvenile Justice Board, of North Tripura district
 for disposal of his case in accordance with the provisions of
 the said Act.

11. Regarding the appeal of the appellant no.1, PW-13,
 E who was working as a daily labourer under the deceased and
 PW-1, has clearly stated that he accompanied the deceased
 for grazing cows to the rubber garden at 2.00 p.m. on the date
 of the incident and at about 4.00 p.m., the appellant no.1 along
 with appellant no.2 went there armed with axe, lathi and gun
 F and the deceased directed PW-13 to bring the cows so that
 they could proceed towards their house, but at that moment
 appellant no.1 dealt an axe blow on the deceased and
 thereafter he took out a gun from the jungle near the place of
 occurrence and shot at the victim and on seeing the incident
 G he tried to run away from the place of occurrence. PW-13 has
 further stated that he returned home and had not disclosed to
 anyone about the incident because he was afraid of the
 appellants. PW-13 has further stated that on the next day in the
 morning he went to the house of PW-2 and narrated the story
 H to him and being afraid of the appellants, he left for Cachar and

he was arrested by the Police and brought to Panisagar and thereafter he narrated the entire story to the police officer. A

12. We are not persuaded by learned counsel for the appellants to take a view that the evidence of PW-13 was not reliable as he was a suspect and had ran away to Cachar. As has been explained by PW-13 himself, he left for Cachar because of his fear of the appellants who had threatened him with dire consequences if he disclosed the incident to anyone. At any rate, we find that the evidence of PW-13 is supported by the evidence of PW-6 who has stated that on the date of the incident he had found the deceased and appellants grazing cows in Nallia Tilla at around 1.30 p.m. Moreover, the evidence of the Investigating Officer (PW-19) read with inquest report (Ext. P-2) prepared by him shows that there were injuries on the dead body of deceased caused by an axe and a gun. PW-19 has also stated that he recovered handle of the axe near the dead body of the deceased and he seized the handle of the axe after preparing a seizure list in presence of the witnesses. Thus, the evidence of PW-13 is corroborated by material particulars by reliable testimony, direct and circumstantial. B
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13. Once we find that the eye witness account of PW-13 is corroborated by material particulars and is reliable, we cannot discard his evidence only on the ground that there are some discrepancies in the evidence of PW-1, PW-2, PW-13 and PW-19. As has been held by this Court in *State of Rajasthan v. Smt. Kalki and Another* [(1981) 2 SCC 752], in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are "material discrepancies" so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. Learned counsel for the appellants F
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A is right that the prosecution has not been able to establish the motive of the appellant no.1 to kill the deceased but as there is direct evidence of the accused having committed the offence, motive becomes irrelevant. Motive becomes relevant as an additional circumstance in a case where prosecution seeks to
B prove the guilt by circumstantial evidence only.

14. In the result, we hold that the appellant no.1 was guilty of the offence under Section 302 of the IPC and we accordingly dismiss the appeal of the appellant no.1. We, however, allow
C the appeal of the appellant no.2, set aside the impugned judgment of the High Court and the judgment of the trial court qua the appellant no.2 and remit the matter to the Juvenile Justice Board of North Tripura district for disposal in accordance with the 2000 Act within four months of receipt of
D a copy of this judgment.

K.K.T.

Appeal of appellant No. 2 allowed
& Appeal of appellant No.1 dismissed.