A DEVILAL AND OTHERS

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 989 of 2007)

B FEBRUARY 25, 2021

[UDAY UMESH LALIT, INDIRA BANERJEE AND K. M. JOSEPH, JJ.]

Penal Code, 1860 – ss.302 r/w 34 – Appellants convicted u/ss.302 r/w 34, sentenced to life imprisonment – Affirmed by High C *Court – On appeal, held: FIR was rightly relied upon by the courts below as dying declaration of the victim-deceased – FIR itself referred to the presence of PW1 (wife of deceased) and PW2 (sister-in-law of the deceased) – Testimony of both these witnesses disclosed that the appellants opened an assault on victim which led to his* D *death – Recoveries of the weapons in question viz., lathi, sword and axe also lend sufficient corroboration to the prosecution's case – Conviction and sentence recorded by the courts below, insofar as the two appellants are concerned, affirmed – Third appellant 'AR', though is also guilty of the offence charged, but was juvenile in terms of the 2000 Act thus, the sentence of life imprisonment imposed* E *upon him is set aside – Matter remitted to Juvenile Justice Board for determining appropriate quantum of fine to be levied on him – Juvenile Justice (Care and Protection of Children) Act, 2000 – s.20 –Juvenile Justice Act, 1986 – Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss.3(1)(10), 3(2)(5).*

F *Juvenile Justice (Care and Protection of Children) Act, 2000 – s.20 – Effect of – Discussed.*

Disposing of the appeal, the Court

HELD: 1.1 The incident in the present case had occurred G **in July, 1998 when the Juvenile Justice Act, 1986 (the 1986 Act) was in force. The age of juvenility for a male juvenile under the 1986 Act was 16 years. Since 'AR' was 16 years 11 months as on the date when the offence was committed, he was certainly not a juvenile within the meaning of 1986 Act. However, the age of**

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juvenility was raised to 18 years in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the 2000 Act). Section 20 of the 2000 Act dealing with proceedings pending against a juvenile on the date the 2000 Act came into force. Where an offender was more than 16 years of age on the day when the incident had occurred (and therefore was not a juvenile within the meaning of the 1986 Act) but was less than 18 years of age on the day of the incident, the question as to what extent benefit can be given in terms of the provisions of the 2000 Act, was considered by this Court in some cases. Thus, even if it is held that 'AR' was guilty of the offence with which he was charged, the matter must be remitted to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine that should be levied on 'AR'. [Para 15, 16 and 18][602-G-H; 603-A-B, F-G; 609-A-B]

Mumtaz alias Muntyaz vs. State of Uttar Pradesh (now Uttarakhand **(2016) 11 SCC 786 : [2016] 3 SCR 434;** *Satya Deo alias Bhoorey vs. State of Uttar Pradesh* **(2020) 10 SCC 555 – relied on.**

1.2 The testimony of PW9-Doctor, shows that victim-deceased ('G') was alive when the initial examination was undertaken by PW9. According to the witness, when he examined 'G', the blood pressure could not be detected. However, that by itself does not mean that the 'G's not in a physical condition to make any reporting to the police two hours earlier. Paragraph 24 of the deposition of PW9 shows that if the symptoms stated therein were present, it could possibly be said that the concerned person would not be in a position to speak. First of all, such assertion is purely an opinion of an expert. Secondly, nothing is available on record to show that 'G' had shown these symptoms either soon after the incident or when his statement was recorded by PW8. No questions were put to PW1, PW2 and PW8 in that behalf. The submission advanced on this score is therefore, rejected and it is found that the FIR was rightly relied upon by the courts below as dying declaration on part of 'G'. The FIR itself referred to the presence of PW1 and PW2. The substantive testimony of both

these witnesses clearly discloses that the appellants had opened an assault on 'G' which led to his death. The assertion on part of PW1 that her earlier statement recorded during investigation was read over to her does not mean that she was tutored to follow the line of prosecution. No such questions were put to PW2. Thus, even if the testimony of PW1 is eschewed from consideration, the deposition of PW2 along with the dying declaration of 'G', completely clinch the matter against the appellants. Additionally, the recoveries of the weapons in question viz., lathi, sword and axe also lend sufficient corroboration to the case of the prosecution. [Para 21, 22][609-F-H; 610-B-E]

1.3 The view taken by the courts below is affirmed and the appellants are found guilty of the offence with which they were charged. The conviction and sentence recorded by the courts below, insofar as accused 'D' and Gokul are concerned, are, therefore, affirmed and the present appeal insofar as these two accused are concerned is dismissed. However, even while holding the appellant 'AR' to be juvenile in terms of the 2000 Act and guilty of the offence with which he was charged, the sentence of life imprisonment imposed upon him is set aside and the matter is remitted to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine that should be levied on appellant 'AR' in keeping with the directions issued by this Court in *Jitendra Singh vs. State of U.P*. Since 'D' and Gokul were released on bail by this Court vide Order dated 08.04.2009, they are directed to surrender before the concerned Police Station within two weeks from today, failing which the bail bonds furnished at the time of their release on bail shall stand forfeited and they shall immediately be arrested by the concerned police to undergo the sentence imposed upon them. [Para 23-25][610-E-H; 611-A]

Jitendra Singh vs. State of U.P **(2013) 11 SCC 193 : [2013] 13 SCR 764 – relied on.**

Case Law Reference

[2016] 3 SCR 434	**relied on**	**Para 16**
(2020) 10 SCC 555	**relied on**	**Para 17**
[2013] 13 SCR 764	**relied on**	**Para 24**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 989 of 2007. A

From the Judgment and Order dated 14.9.2006 of the High Court of Madhya Pradesh, Bench Indore in Criminal Appeal No. 700 of 1999.

Sushil Kumar Jain, Sr. Adv., Harshit Khanduja, Puneet Jain, Ms. Christi Jain, Harsh Jain, Ms. Pratibha Jain, Pashupathi Nath Razdan, Harmeet Singh Ruprah, Arjun Garg, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

1. This appeal, at the instance of Devilal son of Chetaram Gujar and his two sons Gokul and Amrat Ram, is directed against the judgment and order dated 14.09.2006 passed by the High Court[1] in Criminal Appeal No.700 of 1999. C

2. The appellants along with one Gattubai, wife of accused Devilal, were tried in Special Offence Case No. 88 of 1998 in the court of Special Judge (SC/ST), Mandsaur, Madhya Pradesh under Sections 302 read with 34 of the Indian Penal Code (for short, 'IPC') and Sections 3(1)(10) and 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act', for short). D

3. The instant crime arose out of F.I.R. No.212 of 1998 registered at 11.10 p.m. on 19.07.1998 with Police Station Manasa, District Neemach, Madhya Pradesh. The reporting made by one Ganeshram was to the following effect:- E

> "I am resident of village Khera Kushalpura. On 14.7.98, there had been quarrel between Devilal son of Jetram Gurjar and me in village Khera Kusalpura. Today, in the evening I was coming from Binabas after doing my work and going by walk to my house. At about 8 p.m., while going towards my house on public road when I had reached in front of the house of Devilal Gurjar then after seeking me Devilal armed with Kulhari, his son Gokul armed with Talwar and Amritlal armed with lathi had come there. Devilal had abused me and called me as Chamar and stated that Chamars have advanced too much. He told me that he shall finish me. He had attacked me from sharp side of Kulhari with intention to kill F G

[1] High Court of Madhya Pradesh, Bench Indore H

A me. The first blow hit me on the bone (calf) of right leg. Gokul had given second sword blow on my bone (calf) of left leg. My both legs were cut and I fell down there itself. Then Amritram had given lathi blow on my right fist and left hand and my right fist was fractured. These persons had again called me Chamar and told me that if I shall fight with them again. They had kicked me B on my face below both eyes and there is swelling. Then I shouted for help. My mother Gattu Bai, wife Sajan Bai and sister-in-law Saman Bai had run from home and reached there, they protected me. When Saman Bai was protecting me then Devilal had given blow on her left elbow. Later, my mother, wife and sister-in-law C lifted me and taken me to home. Kanhaiyalal had brought tractor from Barbua. …Satyanarain, my sister-in-law Saman Bai have put me in the tractor and brought me to police station. I am lodging report, I have heard the report, it is correct. Action may be taken. My hand is fractured and I cannot sign. I have put my thumb impression."

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4. The aforesaid FIR was recorded by PW8-Shankar Rao, who, then took Ganeshram along with Tehsildar to Community Health Centre, Manasa, where PW9-Dr. Kailash Chandra Kothari examined injured Ganeshram. It was found that the general condition of the injured was not good; that he was unable to speak; and that his blood pressure could E not be recorded. The injuries found on the person of Ganeshram were recorded in report Exhibit P/23 and Ganeshram was referred to Surgical Specialist, District Hospital, Mandasaur vide Reference Form Exhibit P/25 at about 12.45 a.m. on 20.07.1998. However, while PW9-Dr. Kothari was completing the formalities, Ganeshram expired at 1.00 a.m.. PW9-F Dr. Kothari, therefore, recorded the information of death in Exhibit P/26 under his signature.

5. At about 9.45 a.m. on 20.07.1998, application Exhibit P/17 was received by PW9-Dr. Kothari, pursuant to which post-mortem was conducted on the dead body of Ganeshram. The observations with G respect to external and internal injuries suffered by the deceased were as under:-

"16. The following external injuries were present on his person –

1. Incised wound with dimension of five X four and a half X three and a half cm. which is present on left leg in

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which broken pieces of Tibia and Fibula bone were found. Much of blood was found to have coagulated near about the wound.

2. Incised wound with dimension of four and a half X three and a half X two and a half cm. which was present on right leg through which tibia and Febula bone was clearly visible and in which much blood was found coagulated.

3. Cyanosed mark on lower part of right hand four and half X two and a half cm. dimension.

4. Cyanosed mark on left hand three and a half X two and a half cm. dimension.

5. Incised wound on left eyebrow two X one X half cm dimension.

17. All the said injuries were ante mortem.

18. The internal examination found that –

1. Skull – The front right part of the skull was found broken. Membrane was contracted and much of blood was found coagulated. Blood lumps were stuck in the brain and brain was found contracted. Tympanium, rib, pleura, Trachea and throat were found contracted. Both the lungs were found dry and contracted. After cutting the lungs blood etc. yeast etc. did not come out.

2. Heart – left chamber of the heart was found empty. Right side chamber was full of blood. The velum membrane of the intestine morsel pipe all were pale and contracted Membrane in the stomach was contracted and was pale and stomach was empty small intestine and large intestine were contracted and was having paleness. Liver, spleen, Kidney all were contracted.

3. Bladder was empty.

4. The following bones inside the body were found fractured –

1. Front skull bone, right side skull bone, Tibia, Febulas left and right both were found broken. Right radius ALNA was found fractured. Left numerous was found broken."

A The cause of death was stated to be excessive bleeding from the injuries suffered by the deceased.

6. During the course of investigation, PW8-Shankar Rao prepared site map Exhibit P/18 and arrested accused Devilal, Gokul and Amrat Ram vide Exhibits P/5 to 7.

B Pursuant to disclosure statement made by accused Gokul vide Exhibit P/8, a sword was recovered. Similarly, pursuant to the disclosure statement made by accused Amrat Ram, vide Exhibit P/9, a lathi was recovered, while pursuant to disclosure statement made by accused Devilal, vide Exhibit P/10, an axe was recovered.

C Statements of Sajan Bai (PW1), Saman Bai (PW2), Kanhaiyalal (PW3) Satya Narayan (PW4), Amarlal (PW6) and Gatto Bai were also recorded by PW8-Shankar Rao.

7. After completion of investigation, the appellants along with Gattubai wife of accused Devilal were tried in Special Offence Case
D No. 88 of 1998 as stated above.

8. In support of its case, the prosecution relied upon the eyewitness account through PW1-Sajan Bai, PW2-Saman Bai and PW7-Lakshminarayan.

E a) PW1-Sajan Bai, wife of the deceased, in her examination-in-chief stated:-

> "2. The event is of 19th of Seventh month. The time was evening between 7 to 8 o'clock. I had returned after doing labour and myself, my mother-in-law and Devrani were sitting on otla outside the house. I heard the call of my husband that
F rush I am being beaten.
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> 3. All the three of us rushed and reached in front of Devi Lal's house. We saw there that Gokul, Amrit Ram and Devi Lal were beating my husband and Gatto Bai was standing there.
G Gokul was having sword, Amrit Ram was having lathi. Devilal was having axe in his hand. My husband's hands and legs had been cut. His hands were broken and legs were cut. While beating these were telling DHED Caste CHAMARS have become arrogant (DHED JAT CHAMARON KE BHAV BADH GAYE HAIN).

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4. I, my mother-in-law, my Devrani lifted Ganeshram and brought to our house. My husband was having injury on eye and head also. Then my Jeth Kanhiyalal came at home.

5. My Jeth went to Badkua to bring tractor wherefrom he came with Ratan Ba's tractor. Then Ganeshram was put in tractor and brought to Manasa Police Station. My husband lodged report at the police station, myself, my Jeth, my Devrani, two Devars, mother-in-law and Devi Lal of Badkuan also went to manage in the tractor. My husband could read and write but hands had been broken, therefore did not sign had put thumb impression.

6. They were taken to the hospital from the Police Station. Treatment was given there. Ganeshram breathed his last within 2 to 3 hours there itself."

In her cross-examination the witness stated:-

"10. The police had taken my statement which was read over to me yesterday. Then said did not read over yesterday. Had read over to all the three of us separately. We were made to understand what statement we have to make in the court. The Government Advocate who examined today had read over."

b) PW2-Saman Bai, sister-in-law of the deceased, stated:-

"2. On dated 19th of seventh month, at about 7-8 p.m., we had come from our work and we were sitting on Otley. My sister-in-law, mother-in-law and I all three were sitting there. At the time of fight, Ganeshram had shouted for help. After hearing shout, we all the three had run and reached there in front of the house of Devilal.

3. All the four accused persons were beating Ganeshram and they were telling that they shall kill him. They were continuously calling him Chamar. Gokul was armed with Talwar, Devilal was armed with Kulhari, Amritram was armed with lathi and Gattubai was having Mogri of washing cloth."

c) PW7-Laxminarayan, brother of the deceased, in his examination-in-chief stated:-

A "3. This incident has taken place nearly 7 months ago. Ganeshram was coming to house by motor. Motor comes at 7 p.m. This incident has taken place during the evening. Ganeshram was coming. On the way, a quarrel started in front of the house of Devilal. I was standing outside my house on the "Otle". I heard shouts on which I have gone to see what is happening. I saw that Gokul, Amritram, Devilal were beating my brother. Devilal had an axe, Gokul had a sword and Amritram had a truncheon. Gatthubai had a "Tenpa" (a piece of wood). I was standing slightly away. I was standing at a distance of around 15-20 steps away.

C 4. I could not see that who has inflicted injury on which part.

5. Devilal exclaimed for me that, "kill this 'Chamate Rampe' also", on which I have ran away to my house.

6. I have ran away to my house from there, on which my mother, my sister-in-law Sajanbai and my wife Samanbai went to the place where quarrel was taking place. Then, all three of them brought Ganeshram to the house.

7. Hands and legs of Ganeshram have been incised.

8. Then, my brother Kanhaiyyalal went to Badkuan and brought a tractor from there. We took Ganeshram to Manasa by tractor. Ganeshram had lodged a report at Manasa P.S. Statements were recorded over there and then we went to hospital. Doctors have provided treatment over there and during the course of treatment Ganeshram had died."

F In his cross-examination the witness stated:-

"28. I have returned back from the place of incident and sent my mother, sister-in-law and wife, a fact which I have not told to the police. Police has not held inquiry in this regard because of which I have not told this fact.

G 29. The house of Devilal cannot be seen from my house.

30. I have came back running from the house of Devilal in 2-3 minutes."

d) The medical evidence was unfolded through the testimony of H PW9-Dr. Kothari, who in his cross-examination accepted:-

"24. I agree with Modi's Medical jurisprudence that breathing intermittently, not catching the pulse speed, non tracing of blood pressure, spreading of eye pupils and reacting weakly on throwing light spreading of blackness on the pupils and eye brows of the injured Ganesh – all these symptoms are of immediately following unconscious at the spot in the state of injured and will not get consciousness till death.

25. Such type of injured persons lose their memory at once on getting injury.

26. If the incident takes place at 8 o'clock evening then the patient will become unconscious at once and will not remain in the state of speaking.

27. All this condition was of the injured Ganesh."

9. After considering the evidence on record, the Trial Court found that the FIR recorded at the instance of the deceased could be relied upon as dying declaration and that the statements of PW1-Sajan Bai, PW2-Saman Bai and PW7-Laxminarayan as well as the recoveries at the instance of accused Devilal, Gokul and Amrat Ram proved the case of prosecution. By its judgment and order dated 01.05.1999, the trial Court found that the offence under Section 302 read with 34 IPC was proved by the prosecution as against accused Devilal, Gokul and Amrat Ram. It was, however, found that the case was not proved against the fourth accused Gattubai. It was further found that none of the accused could be held guilty under offences punishable under SC/ST Act.

Thus, the appellants were convicted under Sections 342 read with 34 IPC and by a separate order recorded on the same day they were sentenced to suffer imprisonment for life with fine of Rs.5,000/- each, in default whereof to undergo further imprisonment for two years.

10. Being aggrieved, Criminal Appeal No. 700 of 1999 was preferred by accused Devilal, Gokul and Amrat Ram in the High Court. It was submitted before the High Court that considering the medical evidence on record and the statement of PW9-Dr. Kothari, it was unlikely that the deceased could have made any statement before the police, on the basis of which the FIR was recorded in the present case. The further submission was that, as admitted by PW1-Sajan Bai, in her cross-examination, the witnesses were tutored. These submissions were not accepted by the High Court. It, however, accepted that the version of

A PW7-Laxminarayan could not be relied upon as the same was not consistent with the statement of PW2-Saman Bai and the name of PW7-Laxminarayan was also not mentioned in the FIR. The High Court thus affirmed the conviction and sentence recorded against accused Devilal, Gokul and Amrat Ram and dismissed Criminal Appeal No. 700 of 1999 by its judgment and order dated 14.09.2006 which decision is presently under challenge.

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11. During the pendency of this appeal, by Order dated 08.04.2009 this Court released accused Devilal and Gokul on bail as they had undergone imprisonment for nine years and four months.

C I.A. No. 4224 of 2017 was, thereafter, filed submitting *inter alia* that accused Amrat Lal was a juvenile on the day the offence was committed and that in the light of the decision of this Court in ***Hari Ram vs. State of Rajasthan and another***[2], the submission of his juvenility could be raised for the first time before this Court.

D 12. By Order dated 3.10.2018 this Court directed the Sessions Judge, Neemach to conduct an inquiry into the issue of juvenility of Amrat Ram and submit a report to this Court. In the inquiry so conducted, statements of concerned persons including Assistant Teacher, Government Primary School, Khushalpura, were recorded and the documents were considered, whereafter, it was found that the date of birth of accused E Amrat Ram was 23.03.1981 and that he was 16 years 11 months and 26 days on the date of offence. Accordingly, the in-charge District and Sessions Judge, Neemach has forwarded report dated 03.12.2018 to this Court.

13. In this appeal, we have heard Mr. Sushil Kumar Jain, learned F Senior Advocate on behalf of the appellants and Mr. Harmeet Singh Ruprah, learned Advocate appearing for the respondent-State.

14. At the outset, we must deal with the issue of juvenility of Amrat Ram.

G 15. The incident in the present case had occurred in July, 1998 when the Juvenile Justice Act, 1986 ('the 1986 Act', for short) was in force. The age of juvenility for a male juvenile under the 1986 Act was 16 years. Since Amrat Ram was 16 years 11 months as on the date when the offence was committed, he was certainly not a juvenile within

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H [2] (2009) 13 SCC 211

the meaning of 1986 Act. However, the age of juvenility was raised to 18 years in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the 2000 Act', for short). Section 20 of the 2000 Act dealing with proceedings pending against a juvenile on the date the 2000 Act came into force, states:-

> "**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 (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 material times when the alleged offence was committed."

16. Where an offender was more than 16 years of age on the day when the incident had occurred (and therefore was not a juvenile within the meaning of the 1986 Act) but was less than 18 years of age on the day of the incident, the question as to what extent benefit can be given in terms of the provisions of the 2000 Act, was considered by this Court in some cases. In ***Mumtaz alias Muntyaz vs. State of Uttar Pradesh (now Uttarakhand)[3],*** after noting the earlier decisions, this Court observed:-

[3] (2016) 11 SCC 786

A **" 18.** The effect of Section 20 of the 2000 Act was considered in *Pratap Singh* v. *State of Jharkhand*[4] and it was stated as under: (SCC p. 570, para 31)

"*31*. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a
B non obstante clause. The sentence

'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 came into force'

has great significance. The proceedings in respect of a juvenile
C pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986
D Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that
E court as if the 2000 Act has 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, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile."

F **19.** In *Bijender Singh* v. *State of Haryana*[5] , the legal position as regards Section 20 was stated in the following words: (SCC pp. 687-88, paras 8-10 & 12)

"*8*. One of the basic distinctions between the 1986 Act and the 2000 Act relates to the age of males and females. Under the
G 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been

[4] (2005) 3 SCC 551
H [5] (2005) 3 SCC 685

maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short "the Board") which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations. …

11.***

12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose."

20. In *Dharambir* v. *State (NCT of Delhi)*[6] the determination of juvenility even after conviction was one of the issues and it was stated: (SCC p. 347, paras 11-12)

"*11*. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in

[6] (2010) 5 SCC 344

terms of clause (*l*) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act 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.

12. Clause (*l*) of Section 2 of the 2000 Act provides that "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. Section 20 also 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 2000 Act."

21. Similarly in *Kalu* v. *State of Haryana*[7], this Court summed up as under: (SCC p. 41, para 21)

"*21*. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile 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 the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it 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 Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and

[7] (2012) 8 SCC 34

for all material times when the alleged offence was committed." A

22. It is thus well settled that in terms of Section 20 of the 2000 Act, in all cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the court would continue and be taken to the logical end subject B to an exception that upon finding the juvenile to be guilty, the court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the 2000 Act. What kind of order could be passed in a matter where claim of juvenility came to be accepted in a situation similar to the present case, was dealt with by this Court in *Jitendra Singh* v. *State of U.P.*[8] in the following terms: (SCC pp. 210-11, C para 32)

"*32*. A perusal of the "punishments" provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the appellant, advising or admonishing D him [clause (*a*)] is hardly a "punishment" that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, E guardian or fit person [clause (*b*)]. For the same reason, the appellant cannot be released on probation of good conduct under the care of a fit institution [clause (*c*)] nor can he be sent to a special home under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (*d*)]. The only F realistic punishment that can possibly be awarded to the appellant on the facts of this case is to require him to pay a fine under clause (*e*) of Section 21(1) of the Juvenile Justice Act, 1986."

23. In *Jitendra Singh* v. *State of U.P.*[8], having found the juvenile G guilty of the offence with which he was charged, in accordance with the law laid down by this Court as stated above, the matter was remanded to the jurisdictional Juvenile Justice Board constituted under the 2000 Act for determining appropriate

[8] (2013) 11 SCC 193 H

quantum of fine. The view taken therein is completely consistent with the law laid down by this Court and in our opinion the decision in *Jitendra Singh* v. *State of U.P.*[8] does not call for any reconsideration. The subsequent repeal of the 2000 Act on and with effect from 15-1-2016 would not affect the inquiry in which such claim was found to be acceptable. Section 25 of the 2015 Act makes it very clear."

17. Recently, in ***Satya Deo alias Bhoorey vs. State of Uttar Pradesh***[9], this Court observed:-

> **"19.** This position of law and principle in *Mumtaz case3* was affirmed by this Court for the first time in *Hari Ram* v. *State of Rajasthan2* in the following words: (SCC p. 223, para 39)
>
> "*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."
>
> **20.** In light of the legal position as expounded above and in the aforementioned judgments, this Court at this stage can decide and determine the question of juvenility of Satya Deo, notwithstanding the fact that Satya Deo was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced. As Satya Deo was less than 18 years of age on the date of commission of offence on 11-12-1981, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act."

[9] (2020) 10 SCC 555

18. It is thus clear that, even if it is held that Amrat Ram was guilty of the offence with which he was charged, the matter must be remitted to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine that should be levied on Amrat Ram.

19. We now turn to the basic issue whether the appellants were rightly held guilty by the courts below.

20. Mr. Sushil Kumar Jain, learned Senior Advocate for the appellants has submitted that given the cross-examination of PW9-Dr. Kothari, it would be impossible to believe that Ganeshram could have made any reporting to the police as alleged. It is submitted that, according to the FIR, the incident had occurred around 8.00 p.m., while the FIR was recorded after more than three hours. Mr. Jain has further submitted that, as accepted by PW1-Sajan Bai, witnesses were clearly tutored and, as such, the value of the testimony of PWs 1 and 2 stands diminished to a great extent. Relying on the cross-examination of PW7-Laxminarayan, it is submitted that the front of the house of accused Devilal where the incident was stated to have occurred was not visible for the alleged eye witnesses.

The submissions are countered by Mr. Harmeet Singh Ruprah, learned Advocate for the State. It is submitted that the testimonies of PWs 1 and 2 are quite consistent; their presence was recorded right from the initial stage of reporting of the crime; that the distance between the houses was just about 100 feet and; that there was no effective cross-examination on the issue whether they had enough opportunity to witness the incident.

21. The testimony of PW9-Dr. Kothari, shows that Ganeshram was alive when the initial examination was undertaken by PW9-Dr. Kothari. According to the witness, when he examined Ganeshram, the blood pressure could not be detected. However, that by itself does not mean that Ganeshram was not in a physical condition to make any reporting to the police two hours earlier. Paragraph 24 of the deposition of PW9-Dr Kothari shows that if the symptoms stated therein were present, it could possibly be said that the concerned person would not be in a position to speak. First of all, such assertion is purely an opinion of an expert. Secondly, nothing is available on record to show that Ganeshram had shown these symptoms either soon after the incident or

A when his statement was recorded by PW8 Shankar Rao. No questions were put to PW1-Sajan Bai, PW2 Saman Bai and PW8-Shankar Rao in that behalf. We, therefore, reject the submission advanced on this score and find that the FIR was rightly relied upon by the courts below as dying declaration on part of Ganeshram.

B 22. The FIR itself referred to the presence of PW1-Sajan Bai and PW2-Saman Bai. The substantive testimony of both these witnesses clearly discloses that the appellants had opened an assault on Ganeshram which led to his death. The assertion on part of PW1-Sajan Bai that her earlier statement recorded during investigation was read over to her C does not mean that she was tutored to follow the line of prosecution. It is relevant to note that no such questions were put to PW2-Saman Bai.

Thus, even if the testimony of PW1-Sajan Bai is eschewed from consideration, the deposition of PW2-Saman Bai, along with the dying declaration of Ganeshram, completely clinch the matter against the D appellants.

Additionally, the recoveries of the weapons in question viz., lathi, sword and axe also lend sufficient corroboration to the case of the prosecution.

E 23. In the premises, we affirm the view taken by the courts below and find the appellants guilty of the offence with which they were charged. Their appeal, therefore, deserves dismissal. The conviction and sentence recorded by the courts below, insofar as accused Devilal and Gokul are concerned, are, therefore, affirmed and the present appeal insofar as these two accused are concerned is dismissed.

F 24. However, even while holding the appellant Amrat Ram to be juvenile in terms of the 2000 Act and guilty of the offence with which he was charged, we set aside the sentence of life imprisonment imposed upon him and remit the matter to the jurisdictional Juvenile Justice Board for determining appropriate quantum of fine that should be levied on G appellant Amrat Ram in keeping with the directions issued by this Court in ***Jitendra Singh vs. State of U.P***[8]**.**

25. Since Devilal and Gokul were released on bail by this Court vide Order dated 08.04.2009, they are directed to surrender before the concerned Police Station within two weeks from today, failing which the H

bail bonds furnished at the time of their release on bail shall stand forfeited and they shall immediately be arrested by the concerned police to undergo the sentence imposed upon them. A copy of this Order shall immediately be transmitted by the Registry of this Court to the jurisdictional Chief Judicial Magistrate and the concerned Police Station for compliance. A

26. The appeal is disposed of in afore-stated terms.

Divya Pandey Appeal disposed.