

**Ravinder Kumar @ Ravi Vs. State**

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**Court :** Delhi

**Decided On :** Sep-25-2007

**Reported in :** 2008(103)DRJ27

**Judge :** Mukul Mudgal and; Reva Khetrapal, JJ.

**Acts :** Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2, 3, 20, 26 and 64; [Juvenile Justice Act, 1986](#); Rajasthan Children Act, 1970; Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006 - Sections 5, 7A, 9, 9(1), 10, 12(1), 12(3), 12(16), 13, 13(1), 14, 15, 15(1), 16, 16(1), 16(2), 20, 25, 64 and 65; Indian Penal Code (IPC) - Sections 34, 201, 302 and 364; [Code of Criminal Procedure \(CrPC\) , 1973](#); [Constitution of India](#) - Articles 15, 39, 45 and 253

**Appeal No. :** Crl. A. 169 and 235/2003

**Appellant :** Ravinder Kumar @ Ravi;amit Kumar

**Respondent :** State;state of N.C.T. of Delhi

**Advocate for Def. :** Sunil Sharma, APP

**Advocate for Pet/Ap. :** R.S. Mishra, Adv

**Judgement :**

**Reva Khetrapal, J.**

1. Two young boys, the appellants Amit Kumar and Ravinder Kumar, with another young boy named Suman are alleged to have murdered Noor Alam @ Shibu, aged 5 years in the night intervening 9th/10th November, 1999. The trial of accused Suman is being conducted by the Juvenile Court while the appellants Amit Kumar and Ravinder Kumar were tried by a learned Additional Sessions Judge and on the basis of circumstantial evidence adduced by the prosecution, have suffered life sentence for the offences under Sections 302/364/34 IPC. Both the appellants are further sentenced to undergo rigorous imprisonment for three years besides fine for the offence punishable under Section 201 Indian Penal Code.

2. It is proposed to dispose of both the appeals by this common order in view of the fact that identical questions of fact and law arise in both the appeals.

3. The appeals though preferred for setting aside the conviction, during the pendency of the appeals Mr. R.S. Mishra, counsel for the appellant Ravinder Kumar and Mr. I.B.S. Thokchom, counsel for the appellant Amit Kumar stated that they did not wish to press the appeals on merits as the appellants were entitled to avail of the beneficial provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. Subsequently, since there was no appearance on behalf of the appellant Amit Kumar, Mr. R.S. Mishra, Advocate was appointed as amicus curiae by this Court to represent the appellant Amit Kumar as well.

4. In view of the fact that Mr. Mishra, learned Counsel for the appellants did not assail the conviction of both the appellants recorded by the learned trial Judge, a narration of the facts is not called for and we, therefore, straightaway proceed to consider the sole contention raised by Mr. Mishra who as indicated above, invokes the beneficial provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 to press for the release of the appellants, stating that after the recording of the conviction of the appellants, the learned trial Court gravely erred in sentencing the appellants in the teeth of the statutory provisions of the Act.

5. This being the mainstay of Mr. Mishra's case for the release of the appellants, at the outset, it was deemed expedient by this Court to get an inquiry conducted through the investigating agencies into the aspect of juvenility of the appellants. In the course of the said inquiry, it clearly emerged that the appellant Ravinder

Kumar was 16 years and 5 months of age his date of birth being 26.06.1983 on the date of the incident, i.e., on 09.11.2001 as verified by the S.H.O. concerned from his school certificate. The appellant Amit Kumar was revealed to be 15 years and 10 months of age as per his school transfer certificate, his date of birth being 18.01.1984. As per the ossification test, the age of the appellant Amit was stated to be between 18 to 20 years, meaning thereby on the date of the incident he was between 15 years, 8 months and 17 years, 8 months. The outcome of the said inquiry was not challenged by the State and thus the entire matter is being proceeded with on the premise that both the appellants were juvenile on the date of the commission of the offence.

6. Before we consider the applicability of the statutory provisions of the Juvenile Justice (Care and Protection of Children) Act to the two juveniles in the present case, in our opinion, a recounting of the history of juvenile justice in this country is called for. It is well known that prior to the enactment of the [Juvenile Justice Act, 1986](#) (the precursor of the 2000 Act), there was no uniform legislation with regard to juvenile justice in the country since the subject matter of such legislation fell in the State List of the Constitution. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice enabled Parliament exercising its powers under Article 253 of the Constitution read with Entry 14 of the Union List to make any law for the administration of juvenile justice for the whole of India, to fulfill international obligations. The said rules known as the Beijing Rules, adopted by the General Assembly in 1985, vide Chapters 2 and 5 of Part I provide as under:

## 2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by member States in a manner which is compatible with their respective legal systems and concepts:

(a) a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) an offence is any behavior (act or omission) that is punishable by law under the respective legal systems;

(c) a juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) to meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) to meet the needs of society; and

(c) to implement the following rules thoroughly and fairly.

## 5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

7. In the above background, the Juvenile Justice Bill, 1986 was passed by both the Houses of Parliament. After receiving the assent of the President, it came on the Statute Book as the [Juvenile Justice Act, 1986](#) (53 of 1986). Its Statement of Objects and Reasons aimed at achieving the following objectives:

(i) to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is being ensured by established Juvenile Welfare Boards and Juvenile Courts;

(ii) to provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

(iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;

(iv) to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation;

(v) to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or society maladjusted children and to specifically define the areas of their responsibilities and roles;

(vi) to constitute special offences in relation to juveniles and provide for punishments therefore;

(vii) to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

8. The preamble to a statute is the proverbial key to unlock the legislative intent and the preamble of the 1986 Act significantly reads as follows:

An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of, delinquent juveniles.

9. Sub-section (e) of Section 2 of the [Juvenile Justice Act, 1986](#) defined 'delinquent juvenile' as:

(e) 'delinquent juvenile' means a juvenile who has been found to have committed an offence.

10. Sub-section (h) of Section 2 of the Act defined 'juvenile' as:

(h) 'juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

11. On 30th December, 2000, the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) came on the Statute Book repealing the Juvenile Justice Act of 1986. The objects and reasons of the 2000 Act are apposite and read as follows:

An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation [and for matters connected therewith or incidental thereto].

WHEREAS the Constitution has, in several provisions, including Clause (3) of Article 15, Clauses (e) and (f) of Article 39, Articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989;

AND WHEREAS, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child; AND WHEREAS, the Convention on the Rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings;

AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992.

AND WHEREAS, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments.

12. Sub-section (k) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines 'juvenile' or 'child' as:

(k) 'juvenile' or 'child' means a person who has not completed eighteenth year of age.

13. Sub-section (l) of Section 2 of the Act of 2000 defines 'juvenile in conflict with law' as:

(l) 'juvenile in conflict with law' means a juvenile who is alleged to have committed an offence.

14. Thus, the striking distinction between the 1986 Act and the 2000 Act is that under the 1986 Act, a juvenile meant a male juvenile who had not attained the age of 16 years and a female juvenile who had not attained the age of 18 years. In the 2000 Act, a juvenile, whether male or female, was one who had not attained the age of 18 years and thus, by this Act, the distinction between a male and female juvenile which was found in the 1986 Act was obliterated.

15. Both the 1986 Act and the 2000 Act however remained silent on the date of reckoning juvenility and the question which engaged the attention of the Courts for over two decades was : Whether the date of occurrence is to be considered the reckoning date for determining the age of the alleged offender as juvenile or the date when he is produced before the Court or the competent authority? The Supreme Court on this issue expressed differing views in *Umesh Chandra v. State of Rajasthan* : [1982]3SCR583 and *Arnit Das v. State of Bihar* : 2000 CriLJ2971 . In *Arnit Das's* case, a two-Judge Bench after noticing that, neither the definition of juvenile nor any other provision in the Act specifically provided for the date by

reference to which the age of a boy or a girl has to be determined so as to find out whether he or she is a juvenile or not, opined that the date of the commission of the offence is irrelevant for finding out whether the person is a juvenile within the meaning of Clause (h) of Section 2 of the Act and went on to add that if that would have been the intendment of Parliament, nothing prevented it from saying so specifically. While deciding Arnit Das's case, the attention of the Hon'ble Supreme Court was not drawn to the earlier judgment in Umesh Chandra's case wherein the Supreme Court with reference to the Rajasthan Children Act, 1970 held that, it was clearly of the view that the relevant date for the applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

16. A Division Bench of this Court in Charanjeet Singh v. State of NCT of Delhi 114 (2004) DLT 206, while dealing with the issue of the material date to determine the applicability of the Juvenile Justice Act of 2000, in paragraphs 9 and 10 held as follows:

9. From a conjoint reading of the said provisions it is clear that they apply not only to proceedings which may be pending in any Court, they apply to even in those cases where a juvenile is undergoing sentence on the date on which Juvenile Justice Act came into force i.e. 1 April, 2001. It is also axiomatic that the proceedings contemplated in Section 20 mean proceedings either at the stage of trial or appeal and pending in any Court, either at the stage of trial or in the Court of appeal. thereforee, the intention behind the said provisions is not only to avoid de novo trial of the juvenile but also to cover him under the Juvenile Justice Act even after his conviction and during the period he is undergoing sentence. That being the intention behind the new legislation, we are of the considered view that the relevant date to determine the applicability of the Juvenile Justice Act would be the date of occurrence i.e. the age of the accused as on the date when the crime was committed. If he was below 18 years of age at that time, then he would be juvenile under the Juvenile Justice Act and the provisions of this Act would be applicable, once it is found that the case is covered by Section 20 or Section 64 of this Act. Being a piece of social legislation, the provisions of the said Act have to be liberally construed to make them more meaningful to achieve the ultimate

object of the legislation set out in the preamble, namely, the social reintegration and rehabilitation of the juveniles in conflict with law by adopting a child- friendly approach in the adjudication and disposition of matters involving them. It is also of great significance that the Juvenile Justice Act was enacted bearing in mind the standards adopted by the General Assembly of the United Nations in the Convention on the Rights of the Child on 20 November, 1989. The Government of India ratified the Convention on 11 December, 1992.

10. It is well settled that in discerning the correct interpretation, the purpose for which the legislation is brought cannot be lost sight of. In this context, the following observations in a recent decision of the Apex Court in *D. Saibaba v. Bar Council of India* : [2003]3SCR1209 are apt. Speaking for the Bench, R.C. Lahoti, J. (as the Hon'ble Chief Justice of India then was) quoted Justice G.P. Singh's *Principles of Statutory Interpretation* (8th Edition), with approval, to the following effect:

In selecting out of different interpretations 'the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things', as it may be presumed 'that the Legislature should have used the word in that interpretation which least offends our sense of justice'. The Courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative 'on the principle expressed in the maxim : *ut rest magis valeat quam pereat*'.

17. After rendering the above finding in *Charanjeet Singh's* case (supra), the Division Bench of this Court chose to follow *Umesh Chandra's* decision rather than the decision in *Arnit Das* on the following rationale:

In view of the fact that *Umesh Chandra's* decision is by a Larger Bench and further it has not been referred to in *Arnit Das's* case (supra), we feel found to follow the view enunciated by the Larger Bench, which is precisely on the point at issue see *State of U.P. v. Synthetics and Chemicals Ltd.* : 1993(41)ECC326 and *Govt. of A.P. v. B. Satyanarayan Rao* : (2000)IILLJ545SC .

18. Having noticed the conflicting views in *Arnit Das* and *Umesh Chandra* and the fact that in *Arnit Das's* case, the earlier decision of the Supreme Court in *Umesh*

Chandra's case was not considered, the matter was referred to the Constitution Bench which resolved the issue by its judgment in *Pratap Singh v. State of Jharkhand* : 2005 CriLJ3091 . The Constitution Bench identified the following two questions that required an authoritative ruling:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced before the court/competent authority.

(b) Whether the Act of 2000 will be applicable to the case where the proceeding is initiated under the 1986 Act and pending when the 2000 Act was enforced with effect from 1-4-2001.

19. On the first question, overruling *Arnit Das* and upholding its earlier decision in *Umesh Chandra*, the majority judgment in *Pratap Singh* (*supra*) resolved the aspect of relevant date of juvenility as follows:

Therefore, Section 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

In paragraph 20, it further added:

20. As already noticed the decision rendered by a three-Judge Bench of this Court in *Umesh Chandra* was not noticed by a two-Judge Bench of this Court in *Arnit Das*. We are clearly of the view that the law laid down in *Umesh Chandra* is the correct law and that the decision rendered by a two-Judge Bench of this Court in *Arnit Das* cannot be said to have laid down a good law.

20. On the second question, viz., whether the Act of 2000 will be applicable to the case where the proceeding is initiated under the 1986 Act and pending when the 2000 Act was enforced, with effect from 01.04.2001, the Court held:

The provisions of the 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1-4-2001.

21. Thus, the judgment underscored two essential conditions for invoking the provisions of the 2000 Act to be:

(i) On the date of the coming into force of the Act the proceedings against the juvenile must be pending before any Court, and

(ii) On 1-4-2001, the juvenile must be below 18 years of age.

22. Strong reliance is placed by learned Counsel for the appellants on Pratap Singh's case and in particular on paragraphs No. 28 and 29 which read as follows:

28. Similarly, under Section 64 where a juvenile is undergoing a sentence of imprisonment at the commencement of the 2000 Act he would, in lieu of undergoing such sentence, be sent to a special home or be kept in a fit institution. These provisions show that even in cases where a mere inquiry has commenced or even where a juvenile has been sentenced the provisions of the 2000 Act would apply. therefore, Section 20 is to be appreciated in the context of the aforesaid provisions.

29. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with 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 date of which this act came into force' has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is 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 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 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 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.

23. Post Pratap Singh's case (supra), another significant development took place, viz. the coming into force the Amendment Act of 2006. The Juvenile Justice (Care and Protection of Children) Act, 2000 was again overhauled by the legislature by Act 33 of 2006. In order to appreciate the sweep of changes ushered in by the aforesaid Act of 2006 (33 of 2006), insofar as the said changes are relevant for the purposes of the present case, it is proposed to tabulate the provisions of the 2000 Act in juxtaposition with the provisions of the Amended Act of 2006 as under:

Section 2(l)

Juvenile Justice (Care and Protection of Children) Act, 2000

Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

'juvenile in conflict with law' means a juvenile who is alleged to have committed an offence.

['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.]

Sub-section 7A by Act 33 of 2006, Section 4 (w.e.f. 22-8-2006).

7A No such Section.

[Procedure to be followed when claim of juvenility is raised before any court.?

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a

finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, 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.]

In Section 10 by Act 33 of 2006, Section 8 (w.e.f. 22-8-2006).

Apprehension of juvenile in conflict with law. (1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board.

Apprehension of juvenile in conflict with law. [(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time.

(2) The State Government may make rules consistent with this Act?

(i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) to provide the manner in which such juvenile may be sent to an observation home. necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.]Sub-section 15 by Act 33 of 2006, Section 9, for Sub-section (1). Sub-section (1), before substitution, stood as under:

(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board.? (w.e.f. 22-8-2006).

(2) The State Government may make rules consistent with this Act?

(i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board;

(ii) to provide the manner in which such juvenile may be sent to an observation home.

Order that may be passed regarding juvenile. (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behavior and well-being of the juvenile for any period not exceeding three years;

Order that may be passed regarding juvenile. (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behavior and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home,

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile;

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years;

[(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.]

Sub-section 16 by Act 33 of 2006, Section 12, for Clause (g).

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under Clause (d), Clause (e) or Clause (f) of Sub-section (1) is made, the Board, may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behavior during the period of supervision or that the fit institution under whose care the juvenile was placed is not longer able or willing to ensure the good behavior and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under Sub-section (3), explain to the juvenile order.

(3) Where an order under Clause (d), Clause (e) or Clause (f) of Sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behavior during the period of supervision or that the fit institution under whose care the juvenile was placed is not longer able or willing to ensure the good behavior and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under Sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer. and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Order that may not be passed against juvenile. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behavior have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures Order that may not be passed against juvenile.? (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death [or imprisonment for any term which may extend to imprisonment for life], or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behavior have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures

provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under Sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

Sub-section by Act 33 of 2006, Section 13 for (or life imprisonment? (w.e.f. 22-8-2006).

(2) On receipt of a report from a Board under Sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

[Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of this Act.]

Sub-section 20 by Act 33 of 2006, Section 13 for the proviso.

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 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.

Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.? In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of Clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]

In Section 64 by Act 33 of 2006, Section 14

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 or the local authority may direct that a juvenile in conflict with law who is undergoing any 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 or the local authority thinks fits for the remainder of the period of the sentence; and the provisions of this Act shall 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.

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 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 fits for the remainder of the period of the sentence; and the provisions of this Act shall 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.

The words 'or the local authority' omitted by Act 33 of 2006, Section 5 (w.e.f. 22-8-2006).

Sub-section 65 by Act 33 of 2006, Section 25 for 'may direct' (w.e.f. 22-8-2006).

Procedure in respect of bonds.? Provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be, apply to bonds taken under this Act.

Procedure in respect of bonds.? Provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973 (2 of 1974) shall, as far as may be, apply to bonds taken under 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 this Act and the rules made there under, 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.]

Ins. by Act 33 of 2006, sec. 25 (w.e.f. 22-8-2006).

24. A cumulative reading of the above amended provisions of law relating to juvenile justice in juxtaposition with the unamended provisions of the Act of 2000, in our opinion, unambiguously and explicitly makes clear the intent of the legislature on the following aspects:

(i) A juvenile is a person, whether male or female who has not completed eighteenth year of age as on the date of commission of such offence (Section 2(l) as amended).

(ii) The claim of juvenility may be raised before any Court, at any stage, even after the final disposal of the case and shall be determined in accordance with the Act and the Rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act (Section 7A as inserted). Thus, the position of law laid down by the Hon'ble Supreme Court in the case of Pratap Singh, which judgment was delivered on 2nd February, 2005, to the effect that the sine qua non for the applicability of the 2000 Act is that on the date of coming into force of the said Act, i.e., 01.04.2001, the juvenile must be below 18 years of age, now has been amended by the Amendment Act of 2006, which Act of 2006 now postulates that even if the juvenile had ceased to be so on or before the commencement of the Act the claim of juvenility can be raised before any Court at any stage even after the final disposal of the case, and is to be determined in accordance with the Act and the Rules. Thus, this is current state of the law subsequent to the 2006 amendment which will govern all cases involving the claim of juvenility.

(iii) In no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail (Proviso to Section 10 as inserted).

(iv) The Board in exercise of its powers under Section 15 may, inter alia, make an order directing the juvenile to be sent to a special home for a period of three years (Clause (g) in Sub-section 1 as substituted by Act 33 of 2006). Clause (g) in Sub-section 1 of the unamended Act of 2000 however stipulated that in case the juvenile was over seventeen years but less than eighteen years of age, the Board may make an order directing the juvenile to be sent to a special home for a period of not less than two years and in the case of any other juvenile for the period until he ceases to be a juvenile. The amendment obliterated this distinction by providing for a uniform period of three years, regardless of the age of the juvenile.

(v) The scope of the embargo relating to sentences which shall not be passed against a juvenile was enlarged. Thus, the ambit of Sub-section (1) of Section 16 which provided that no juvenile in conflict with law shall be sentenced 'to death or imprisonment for life' was amended to read 'to death or imprisonment for any term which may extend to imprisonment for life....' (Section 16(1) as amended by Act 33

of 2006).

(vi) The power of the Board with regard to orders that may be passed by it regarding juveniles under Section 16 of the Act was curtailed by stipulating that even in grave and serious offences, where the juvenile has attained the age of sixteen years on the date of the commission of the offence and the Board submits a report that it would not be in his interest or the interests of other juveniles to send him to a special home, the State Government may order his protective custody at such place and on such conditions as it thinks fit provided that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of the Act (Proviso to Sub-section (2) of Section 16 as inserted by Act 33 of 2006) which is 3 years.

25. The above being the legal position with the coming into force of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Amendment Act 2006, there is no manner of doubt in our minds that the appellants in both the appeals are entitled to avail the beneficial provisions thereof, being in the range of 15 to 16 years of age on the date of commission of the offence in terms of Clause-I of Section 2 of the Act. Accordingly, while affirming the order of conviction passed by the learned trial Judge, we hold that the appellants cannot be sentenced to imprisonment for life or imprisonment for any term whatsoever. Ordinarily, we would have directed the appellants to be sent to the special home or to a fit institution. But we find that as per the nominal roll of the appellant Amit, he has already undergone more than 5 years and 9 months of actual sentence, while as per the nominal roll of the appellant Ravinder, he has undergone 9 years and 4 months of the actual sentence imposed upon him and, therefore, we do not deem it expedient to send them to the Juvenile Justice Board. More so, as proviso to Sub-section (2) of Section 16 provides that the period of detention of a juvenile in a special home shall not exceed, in any case, the maximum period provided under Section 15(g) of the Act, which is a period of three years.

26. We are persuaded in coming to this conclusion by the judgments of the Hon'ble Supreme Court in Jayendra v. State of U.P. : 1982 CriLJ1000 ; Bhoop Ram v. State of U.P. : 1990 CriLJ2671 ; Pradeep Kumar v. State of U.P. : 1994

CriLJ148 and Bholu Bhagat v. State of Bihar : 1998 CriLJ390 . In all the aforesaid cases, the Apex Court has held that the course to be followed in such cases as the present one is to quash the sentence awarded to the appellant. Accordingly, while sustaining the conviction of the appellants on all the charges framed against them, we quash the sentences awarded to them by the Additional Sessions Judge as we have already found that they have completed in a normal prison, the period of more than three years.

27. Before concluding, however, we feel the need to re-emphasize the directions of the Hon'ble Supreme Court that keeping in view the underlying intendment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the beneficial nature of this socially oriented legislation enacted in consonance with Clause (f) of Article 39 of the [Constitution of India](#), that it is the obligation of the Court, where a plea of juvenility is raised, to examine that plea with care by holding an inquiry for the determination of the age of accused, if need be by asking the parties to lead evidence and seeking a report from the prosecution thereon. This has to be done on priority basis and all Criminal Courts where the issue of juvenility may be required to be looked into shall endeavor to ensure that the inquiry is completed expeditiously preferably not later than 3 months from the date of initiation of the inquiry on the issue of juvenility. Thus we wish to emphasize that in view of the position of law emerging from the above discussion and the impact of Section 7A, the Criminal Courts are duty bound to inquire into the issue of juvenility, if it appears to the Court that one of the accused may or could be juvenile. Needless to add that in case the Court itself entertains any doubt about the age of the accused, it shall also be at liberty and indeed duty bound as per the mandate of Section 7A to adopt the aforesaid modus operandi in ascertaining the true and correct age of the accused, for, lack of sensitivity on the part of the Courts in such cases may render at naught the attempt of the legislature to reform the juvenile in conflict with law and to reinstate him in the society as a useful member of the society. Even worse is the situation where the juvenile delinquent is sent to prison and emerges as a hardened criminal, who cannot be reclaimed by society and must of necessity be lost to the world of crime. It cannot, in our view, be lost sight of that the objectives of the Juvenile Justice Act are curative rather than deterrent or retributive and the interest of the juvenile is paramount. The provisions of the

Act carry a message to the justice delivery system that the protective umbrella of law shall be extended to one who is a juvenile and therefore not yet beyond redemption. If this message is kept in mind and the aim of juvenile justice is singularly focussed on the correction and reformation of those who have yet not attained the age of corrigibility, the day is not far when the child may indeed prove to be the father of man.

28. Both appeals stand disposed of. The bail bonds and surety bonds of the appellants are discharged.

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