

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 10.12.2009

+ CRL. A. No 101 of 2009

GAJANAND @ GAJJU ...APPELLANT
Through: Ms Purnima Sethi, Advocate.

Versus

THE STATE (DELHI ADMN.) ...RESPONDENT
Through: Mr. Sunil Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The appellant, Gajanand @ Gajju, has been convicted and sentenced in Sessions Case No.72/2006 arising out of FIR No.296/2004 registered at P.S. Kirti Nagar for having committed the offence punishable under Sections 302/34 and 392/34 IPC and for offence u/s 302/34 was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs 2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of one year. For offence under section 392/34 IPC he was

sentenced to undergo rigorous imprisonment for seven years and also pay a fine of Rs 1000/- and in default of payment of fine to undergo simple imprisonment for a period of one year. The appellant was also entitled to benefit u/s 428 Cr.P.C.

2. The case of the prosecution is that on 11.6.2004 at about 2.45 p.m. accused persons namely Gajanand, Anil, Mohd Jahangir committed robbery of wrist watch, ration card and Rs 50/- from Ram Chander. Ram Chander informed his brother Nankai (deceased) about the said incident on which both of them went to catch the culprits. Accused persons were seen going towards Nehru Camp. Ram chander and his brother ran to catch hold of the offenders. The deceased could grab one of the accused Gajananad, on which the accused person namely Mohd Jhangir and Anil got there accomplice freed from him and immediately thereafter, Gajananad took out a dagger from his pocket and threatened Ram chander and Nankai to be killed. Deceased not being afraid of, still made an attempt to catch hold of the accused persons on which Mohd Jehangir and Anil caught hold of the deceased from both of his arms and started beating him. Both the accused persons then exhorted to Gajanand to kill Nankai, on which Gajanand stabbed Nankai with a dagger 6-7 times on chest, stomach and arms. The stabbing was so powerful that Nankai well on the ground and his

interstines came out. Nankai died on the spot. Ct Mahinder and Ct Lachu Singh who were on patrolling duty apprehended the accused persons along with the dagger.

3. The appellant aggrieved by the impugned judgment of conviction dated 30.7.2008 and order of sentence of 31.7.2008, has preferred the present appeal.
4. During the course of arguments, learned counsel for the appellant, on instructions from the appellant, has not pressed the grounds of appeal against conviction. He, however, has submitted that the appellant was a juvenile in terms of Section 2 (k) of The Juvenile Justice (Care and Protection of Children) Act, 2000, wherein it is provided that a 'juvenile' or a 'child' means a person who has not completed eighteenth year of age. Thus, he is entitled to be dealt with under the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000.
5. On the 7.10.2009, when the case came up for hearing the learned counsel for the appellant stated that the appellant was under 18 years of age on the date of commission of the offence and hence prayed that an ossification test be carried out on the appellant. The appellant who was also present and he stated that he had studied for a couple of months in a Government school in Kirti Nagar. On this, we directed the respondents to locate the school where the appellant had studied and thereby to verify his date of birth from the records of the school

and also an ossification test to be carried out on the appellant

6. On the next date of hearing i. e 05.11.2009 a status report was filed in which it was stated that the family members of the appellant had no knowledge about the said school and hence the date of birth of the appellant could not be verified. The ossification test was also not carried out till then.
7. However subsequently ossification test was carried out on the appellant on 16.11.2009, and the report has been placed before us. We have perused the report of the ossification test carried out at Deen Dayal Upadhy Hospital (DDU), New Delhi. In terms of the report, the panel of doctors opined the age of the appellant between 20-22 years on the date of ossification test. Since the incident is of 22.6.2004, the appellant would be of age 16+ and thus would definitely be under 18 years of age on the date of the incident
8. Learned counsel for the appellant has taken us through the scheme of The Juvenile Justice (Care and Protection of Children) Act, 2000 and submitted that Section 2(k) of the Act has expanded the definition of juvenile by increasing the age from 16 years to 18 years. He has submitted that Section 7-A(1) of the Act provides for the procedure to be followed when the claim of juvenility is raised before any court and Section 7-A(2) provides that if the court finds a person to be juvenile on the day of commission of

offence, it shall forward the juvenile to the Board for passing appropriate order and the sentence if any passed by a court shall be deemed to have no effect. He has also drawn our attention to Section 20 of the Act which deals with the pending cases of the persons who are covered under the definition of juvenile because of the definition of juvenile under Section 2(k) of the Act increasing the age from 16 to 18 years, and submitted that in view of the aforesaid provisions of the Act, the order of sentence awarding life imprisonment to the appellant is uncalled for and it needs to be modified.

9. In order to appreciate the submissions of learned counsel for the appellant, it would be useful to reproduce Section 7-A of The Juvenile Justice (Care and Protection of Children) Act, 2000, which is as follows:

“7-A Procedure to be followed when claim of juvenility is raised before any court – 1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-

section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.”

From a perusal of Section 7-A of The Juvenile Justice (Care and Protection of Children) Act, 2000, it transpires that as per clause (1), whenever a claim of juvenility is raised before any Court, the Court shall make an inquiry and take such evidence as may be necessary 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 precise age as nearly as possible.

10. Section 20 of The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the procedure to be followed in respect of pending cases pertaining to the juveniles in any court in any area on the date on which the Act comes into force in that area. It provides that such pending cases against the juvenile shall continue in the said courts as if this 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 juvenile, forward the case to the Board which shall pass appropriate orders in respect of that juvenile in accordance with the provisions of the Act.

11. Since the appellant has conceded his pleas against the impugned judgment of conviction on merits, we dismiss the appeal to that extent. So far as the appeal

against the order of sentence is concerned, we have already concluded above that the appellant was a juvenile on the date of commission of offence as his age then was less than 18 years. Clause 2 of Section 7-A and Section 20 of The Juvenile Justice (Care and Protection of Children) Act, 2000 provides that if the Court finds a person to be juvenile in terms of definition under Section 2(k) of the Act on the date of commission of offence, it shall forward the juvenile to the Juvenile Justice Board for passing appropriate orders, and the sentence if any, awarded by a Court shall be deemed to have no effect. The import of this provision is that sentence awarded by the learned trial Judge in terms of the impugned order of sentence will have no effect and the matter has to be referred to the Juvenile Justice Board for passing appropriate orders. We may, however, note that as per Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2000, the maximum period for which a juvenile can be sent to a Special Home is three years. As per the nominal roll of the appellant has undergone a sentence of more than 4 years, meaning thereby that the appellant has already served the maximum period of three (3) years.

12. In view of the fact that the appellant has suffered incarceration for the maximum period of detention in Special Home permissible under The Juvenile Justice (Care and Protection of Children) Act, 2000, we do not deem it

appropriate to refer the matter back to the Juvenile Justice Board for passing appropriate orders and direct formal release of the appellant in the present appeal.

13. We may note that the appeal of co-accused Anil was also partly accepted by a Division Bench of this Hon'ble Court as he was also a minor on the date of commission of the offence

14. The appeal is partly accepted and order on sentence is modified accordingly.

15. Bail-cum-surety bonds of the appellant stand discharged.

SANJAY KISHAN KAUL, J.

DECEMBER 10, 2009
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AJIT BHARIHOKE, J.