

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

% Date of decision: 27.11.2009

+ CRL. A. No.549 of 2009

KULDEEP PANDEY ...APPELLANT

Through: Mr.O.N.Sharma, Advocate.

Versus

THE STATE ...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, Kuldeep Pandey, has been convicted and sentenced in Sessions Case No.21/2008 arising out of FIR No.819/2000 registered at P.S. SP Badli for having committed the offence punishable under Sections 302/34, IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs 5,000/-. In default of payment of fine, the convict person shall further undergo simple imprisonment for a period of six months.

2. The case of the prosecution is that on 22.12.2000 a dead body was found lying in Telephone Exchange Wali Galinear New Telephone Exchange, Badli Extension and the information about the same was conveyed by Ct Prakash Singh to police station SP Badli. which was recorded vide DD No 7A and was entrusted to SI Sanjiv Kumar. On reaching the spot he found a dead body was lying in a naked condition with injuries on both sides of the body. Since the dead body could not be identified, the SI put the said body in a tempo and was taken to the nearby jhuggies in S.P Badli. On reaching one of the jhuggies, one Gangaram identified the dead body to be that of his son Puran. The said body was also identified by Mohal Lal and Kali Charan to be that of his nephew Puran. Insp Balbir Singh who had taken over the investigation of the matter recorded the statement of these three witnesses in which they stated that the deceased was sitting outside his jhuggi, when his two of his friends namely Kuldeep Pandey and Amarjeet Mishra came and took the deceased on the pretext that they were going to attend a party one of their common friends in Jahangir puri. They left at around 8 p.m. and the deceased took the wallet of his father and a wrist watch along with him. Since he did not return the night and they all had also made efforts to trace him, but since now they have seen his body they now know that he was murdered.
3. On 23-12-00 SI Niraj Kumar apprehended the accused Kuldeep pandey from near his house upon a secret

information which was received and upon the information then given by Kuldeep Pandey, the other accused Amarjeet Mishra was also been arrested. Thereafter they stated to have murdered the deceased because on an earlier occasion he had misbehaved with the sister of Kuldeep Pandey and when they confronted him as to why he did it, he stated that it was the other way round, it was she who was attracted to him. On hearing this they both got furious and murdered Puran upon hitting him with stones and bricks. Also the wrist watch and the purse of the deceased was recovered from their possession.

4. The appellant aggrieved by the impugned judgment of conviction dated 27.1.2009 and order of sentence of 30.01.2009, has preferred the present appeal.
5. 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.
6. On 28.7.2009 an application was moved by the appellant for determining his age as he stated that he was a minor at the

time of commission of the offence on which notice was issued. On the next date of hearing i.e 14.09.2009 the learned counsel for the appellant stated that the appellant has studied in a "Nagar Nigam School at Molarband and was admitted in the year of 1988-89 and we directed the IO to verify the same. On the next date the counsel for the appellant also stated that he was younger to his two married sisters and has studied in the same school as the younger sister, and the age of the younger sister can be taken help of, in determining the age of the appellant.

7. Subsequently on 25.11.2009 a verification report was submitted in terms of which it was stated that Kuldeep Pandey was a student of Jai Bharti Public School and according to the principal of the school who gave a statement to the effect that the date of birth of Kuldeep Pandey is 17-11-1984 and also further stated that there was no documentary proof since the parents of the appellant only gave a oral statement regarding his date of birth when they got him admitted to the said school. The verification report is supported by the statement of the principal of the said school, the attested photocopy of the admission form and the school leaving certificate along with attested photocopy of admission register of school
8. Since the incident is of 22.10.2000, the appellant would be of age 16+ and thus would definitely be under 18 years of age on the date of the incident

9. 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.

10. 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.”

11. 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.

12. 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.

13. 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 about 9 years, meaning thereby that the

appellant has already served the maximum period of three (3) years.

14. 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.

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

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

17. A copy of this Order be expeditiously sent to the Superintendent of the concerned jail for compliance.

SANJAY KISHAN KAUL, J.

NOVEMBER 27, 2009
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AJIT BHARIHOKE, J.