

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

Date of decision: 17th April, 2013

+ **CRL.A. 376/2001**

SURJEET SINGH

.... Appellant

Through: Mr. A.J.Bhambhani, Advocate with
Ms. Nisha Bhambhani, Advocate

versus

STATE

..... Respondent

Through: Ms. Rajdipa Behura, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is directed against a judgment dated 14.11.2000 and order on sentence dated 15.11.2000 whereby the Appellant was convicted for the offence punishable under Sections 376/34 of the Indian Penal Code (IPC). He was sentenced to undergo rigorous imprisonment for ten years and to pay fine of ₹5,000/- or in default to undergo rigorous imprisonment for one year for the offence punishable under Section 376 IPC.
2. At the time of hearing the Appeal a plea of juvenility was raised by the Appellant. By an order dated 05.02.2013 the Trial Court was required to conduct a fresh inquiry for determination of the age of the Appellant in view of the amended provisions of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act of 2000) read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (Rules of 2007). The inquiry has since been conducted and it is reported

that the Appellant was aged less than 18 years on the date of the commission of the offence and was thus a juvenile.

3. The issue is no longer *res integra* that if an offence has been committed by a person who was less than 18 years of age before the Act of 2000 came into force and even if the person has attained the age of more than 18 years during the pendency of the proceedings (including the proceedings before the Appellate Court) he will be treated as a juvenile. The effect of amendment in the Act of 2000, particularly, on introduction of Section 7-A and subsequent introduction of Rule 12 of the Rules of 2007 was considered by the three Judge Bench of the Supreme Court in *Abuzar Hossarin @ Gulam Hossain v. State of West Bengal* (2012) 10 SCC 489 wherein while holding that after the amendment of the Act of 2000 by the Amendment Act of 2006, the age of the culprit has to be considered on the date of the offence irrespective of the age at the time of pendency of the proceedings. It would be apposite to extract para 28 of the report as under:-

“28. The amendment in the 2000 Act by the Amendment Act, 2006, particularly, introduction of Section 7-A and subsequent introduction of Rule 12 in the 2007 Rules, was a sequel to the Constitution Bench decision of this Court in Pratap Singh v. State of Jharkhand (2005) 3 SCC 551. In Hari Ram (2009) 13 SCC 211 a two-Judge Bench of this Court extensively considered the scheme of the 2000 Act, as amended by the 2006 Amendment Act. With regard to sub-rules (4) and (5) of Rule 12, this Court observed as follows: (Hari Ram case (2009) 13 SCC 211):-

“27. Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the Board or as the

case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the court or the Board after examining and obtaining any other documentary proof referred to in sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised.”

This Court observed that the scheme of the 2000 Act was to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of the society, instead of degenerating into hardened criminals. In para 59 of the Report, the Court held as under: (Hari Ram case (2009) 13 SCC 211 :-

“59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.....”

4. In the instant case the Appellant was aged 15 years, ten months and one day; thus he was a juvenile on the date of the commission of the offence, that is, on 15.09.1996 as held by the learned ASJ by his report dated 01.04.2013.
5. The learned counsel for the Appellant on his (Appellant's) instructions does not want to address any argument on the merits and says that since he (the Appellant) has already remained in custody for more than five years including the period of remission of about six months. As per provisions of Sections 15 and 16 of the Act of 2000, a juvenile can be

sent to a special home for a period of three years. Moreover, as per Section 7-A (2) of the Act of 2000, the sentence, if any, passed by a Court shall be deemed to have no effect with regard to a juvenile. Thus, normally when a convict is held to be a juvenile, the case has to be remitted to the Juvenile Justice Board (JJB) for an inquiry whether the juvenile has committed any offence and for passing appropriate orders. However, in this case the Appellant has already remained in custody as stated earlier for five years and nine months. Thus, no fruitful purpose would be served by sending the Appellant to the JJB for an inquiry into the offence.

6. A similar view was taken by a Division Bench of this Court in *Raju v. State (Govt. of NCT) of Delhi*, 184 (2011) DLT 100 (DB). Para 10 of the report is extracted hereunder:-

10. The fact that the petitioner had not raised the plea of juvenility before the trial court or before the Division Bench at the stage of the appeal or even before the Supreme Court would not come in his way of seeking the remedy and relief that is sought by virtue of this petition in view of the clear and express provisions of Section 7-A of the said Act. Once we have determined that the petitioner was a 'juvenile' as on the date of the incident, he has to be given the benefit thereof under the said Act. Sections 15 and 16 of the said Act clearly indicate that no juvenile can be kept in custody or detained for a period in excess of 3 years. In the present case, the appellant has already been in custody for over 10 years and 4 months as per the nominal roll on record. Therefore, it is clear that the petitioner has been in custody for a period far in excess of the maximum period of 3 years that is contemplated under the said Act. In these circumstances, he is eligible to be released forthwith. Insofar as the sentence is concerned, the same is deemed to have no effect in view of the provision of Section 7-A(2) of the said Act."

7. The Supreme Court echoed the same sentiments in *Satish @ Dhanna v. State of Madhya Pradesh & Ors.* (2009) 14 SCC 187. Paras 5 and 6 of the report are extracted hereunder:-

“5. In Bhola Bhagat v. State of Bihar (1997) 8 SCC 720 this Court after referring to the decision in Gopinath Ghosh v. State of W.B. 1984 Supp SCC 228 and Bhoop Ram v. State of U.P. (1989) 3 SCC 1 held that an accused who was a juvenile cannot be denied the benefit of provisions of the 2000 Act. The course this Court adopted in Gopinath and Bhola Bhagat cases was to sustain the conviction, but at the same time modify the sentence awarded to the convict.

6. At this distant point of time to refer the appellant to the Juvenile Board would not be proper. Therefore, while sustaining the conviction for the offence for which he has been found guilty, the sentence awarded is restricted to the period already undergone. The appellant be released from custody forthwith unless required to be in custody in connection with any other case.”

8. The Supreme Court reiterated the same view in its later judgments in *Amit Singh v. State of Maharashtra & Anr.* (2011) 13 SCC 744 and *Ashwani Kumar Saxena v. State of M.P.* (2012) 9 SCC 750.
9. In view of above, no fruitful purpose would be served by remitting the matter for an inquiry to the Juvenile Justice Board. The Appellant is, therefore, directed to be released.
10. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

APRIL 17, 2013

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