

Court No. - 13

Case :- CRIMINAL APPEAL No. - 458 of 1998

Appellant :- Ajjoo

Respondent :- State of U.P.

Counsel for Appellant :- Mohsin Iqbal, Mukul Rakesh

Counsel for Respondent :- Govt. Advocate, Raghunath Prasad

Hon'ble Saurabh Lavania, J.

1. Heard Shri Mukul Rakesh, learned Senior Advocate assisted by Shri Atul Kumar Bhatt and Kumar Sushant Prakash, learned counsel for the appellant and Shri S.P. Tiwari, learned A.G.A. for the State-respondent.

2. The instant appeal under Section 374(2) Cr.P.C. has been filed challenging the order dated 07.08.1998 passed by IIIrd Additional Sessions Judge, Unnao in Session Trial No. 788 of 1995 arising out of Case Crime No. 285 of 1995 under Sections 307, 504, Police Station - Bangarmau, District - Unnao. The trial Court awarded ten years rigorous imprisonment and fine of Rs. 5,000/- under Section 307 IPC.

3. Brief facts of the case are to the effect that an FIR was lodged on 28.05.1995 at about 18:30 hours by Kamaluddin at Police Station - Bangarmau, District - Unnao. According to the FIR, the informant was at his shop situated at Badi Bazar Ganj Moradabad and there at about 06 p.m., Ajju S/o Aulia Miyan R/o Mohalla Dargah Sharif Kasba Ganj Moradabad came to his shop and there used abusive language and cause fire-armed injury to the informant/injured on his head and thereafter, the nephew of the injured namely Naushad and Shahjad brought him to the Bangarmau Hospital at Bangarmau.

4. After completion of investigation in the matter, the Investigation Officer submitted the charge-sheet (Ex.Ka-5) before the trial Court. The relevant documents were also submitted i.e. medico-legal report

(Ex.Ka-2), chik FIR (Ex.Ka-3), GD Entry (Ex.Ka-4), site plan (Ex.Ka-6), X-ray report of injured and twenty seven other documents including Bed Head Ticket Folio (Ka.1).

5. To establish its case before the trial Court, the prosecution produced and examined witnesses namely Kamaluddin (P.W.1), Naushad (P.W.2), Hafizur Rehman (P.W.3), Dr. Y.S. Sawan (P.W.4), Dr. Majhar Hussain (P.W.5), Constable Hasin Khan (P.W.6), SI Ramesh Chandra Kannaujiya (P.W.7) and S.O. A.K. Nigam (P.W.8).

6. Dr. Y.S. Sawan (P.W.4) and Dr. Majhar Hussain (P.W.5) proved the medico-legal report and other medical documents including the X-Ray report and it plate. Formal witnesses proved the documentary evidence produced by the prosecution.

7. Injured Kamaluddin (P.W.1) proved the allegations levelled in the FIR. The witnesses of fact, Naushad (P.W.2), Hafizur Rehman (P.W.3) also proved the basic story of the prosecution according to which the appellant caused fire-armed injury to the injured.

8. After completion of evidence of the prosecution, the trial Court put question to the appellant in terms of Section 313 Cr.P.C. and in response, the appellant denied the charges and the case of the prosecution. It is stated that the injured case is completely false and he has been falsely implicated.

9. Thereafter, the trial Court passed the judgment of conviction, under appeal, dated 07.08.1998

10. While impeaching the judgment under appeal it is stated that the trial Court misread the evidence and passed the judgment of the conviction as such the interference is required.

11. Shri S.P. Tiwari, learned A.G.A. for the State-respondent supported the judgment of conviction under appeal and stated that the

statement of one witness is sufficient to convict an accused. In this case, the injured witness has deposed in unimpeachable terms that the appellant caused fire-armed injury and this statement cannot be ignored. The statement/testimony of the injured and prosecution story is duly supported by the medical evidence according to which the injured sustained fire-armed injury on the head as such no interference is required and the appeal is liable to be dismissed.

12. At this stage, Shri Mukul Rakesh, learned Senior Advocate stated that the appellant, presently aged about 46 years, has already been declared juvenile vide order dated 07.03.2019 and according to the order dated 07.03.2019, the appellant was about 16 years 10 months 15 days on the date of incident i.e. on 20.05.1995 and as such the present appeal be dealt with accordingly.

13. This Court finds from record of the present appeal that in compliance of order of this Court, Juvenile Board, District - Unnao has sent a copy of the order dated 07.03.2019. Relevant portion of the order, on reproduction, reads as under:

"अपचारी किशोर रिजवानुरहमान उर्फ अज्जू की ओर से किशोर घोषित करने हेतु प्रार्थना पत्र प्रस्तुत कर संक्षेप में कथन किया गया है कि, प्रार्थी प्रस्तुत वाद में अभियुक्त है। घटना दिनांक 20.05.1995. समय 6 बजे शाम की है। घटना का दिनांक व समय स्पष्ट करने के लिये निर्णय की छायाप्रति शामिल प्रार्थना पत्र है। प्रार्थी ने वर्ष 1991 में हाई स्कूल की परीक्षा यू.पी. बोर्ड डी.सी.के.एम. इण्टर कालेज से उत्तीर्ण की थी। हाई स्कूल प्रमाण पत्र के अनुसार प्रार्थी की जन्म तिथि 19.07.1978 है। प्रार्थी का असली नाम रिजवानुरहमान है, और घर का नाम अज्जू है तथा प्रार्थी के पिता का नाम स्व० करीममुरहमान तथा घर का नाम औलिया मियों है। वादी ने प्रथम सूचना रिपोर्ट में अज्जू पुत्र औलिया मियाँ लिखा दिया। प्रार्थी व उसके पिता का असली नाम नहीं लिखाया था। प्रार्थी द्वारा स्वयं व अपने पिता के असली नाम व पते का निवास प्रमाण पत्र दिनांक 16.01.2017 जो कि नगर पंचायत गंजमुरादाबाद से बनवाया गया है, को प्रस्तुत कर रहा है। घटना दिनांक 20.05.1995 की कही जा रही है, जबकि प्रार्थी का जन्म तिथि हाई स्कूल प्रमाण पत्र के अनुसार 05.07.1978 है। इस प्रकार घटना के समय यह किशोर था। अतः प्रार्थी को किशोर घोषित किये जाने का कथन किया गया है।

अपने उक्त कथन के समर्थन में प्रार्थी द्वारा डी.सी.के.एम. इण्टर कालेज, गंजमुरादाबाद का मैट्रिकुलेशन प्रमाण पत्र दाखिल किया गया है।

सुना तथा प्रपत्रों का अवलोकन किया।

किशोर न्याय (बालको के देख रेख एवं संरक्षण) नियमावली 2007 के नियम 12 (3) में प्राविधानित किया गया है कि, उम्र निर्धारण के लिये किशोर अपचारी का जो साक्ष्य ग्रहण किये जायेगा,

उनमें किशोर अपचारी का (ए) (i) मैदीकुलेशन प्रमाण पत्र या उसके समकक्ष प्रमाण पत्र यदि उपलब्ध हो और उसके उपलब्ध न होने की दशा में उक्त नियम के (ii) प्रथमतः उपस्थिति स्कूल से जारी जन्म प्रमाण पत्र (प्ले स्कूल से भिन्न) और उसके अनुपस्थिति में (iii) के अन्तर्गत निगम या नगर पालिका प्राधिकरण या पंचायत द्वारा प्रदत्त जन्म प्रमाण पत्र तथा उपरोक्त नियम के क्लाज (बी) में यह उल्लिखित किया गया है कि क्लाज (ए) (i) (ii) या (iii) के उपलब्ध न होने की स्थिति में विधिवत गठित मेडिकल बोर्ड की चिकित्सीय राय लिया जायेगा।

प्रार्थना पत्र प्रस्तुत होने पर सम्बंधित विद्यालय के प्रधानाध्यापक को शैक्षिक अभिलेखों के सत्यापन हेतु जिला विद्यालय निरीक्षक उन्नाव को अभिलेखों के प्रविष्टियों के सत्यापन एवं वादी मुकदमा को आपत्ति प्रस्तुत करने हेतु नोटिस प्रेषित किया गया।

आहूत किये जाने पर सम्बंधित विद्यालय के प्रधानाचार्य श्री अनिल कुमार कटियार बोर्ड के समक्ष उपस्थित आये, जिन्हें बतौर सी.डबल्यू -1 के रूप में परीक्षित कराया गया है। मुख्य परीक्षा में उक्त साक्षी द्वारा कथन किया गया है कि वे प्रधानाचार्य के पद पर अप्रैल 2018 से कार्यरत हैं। डी.सी.के.एम. इण्टर कालेज गंजमुरादाबाद उन्नाव में रिजवानुर्रहमान उर्फ अज्जू पुत्र करीमुनर्रहमान निवासी गंजमुरादाबाद थाना बांगरमउ उन्नाव ने कक्षा 9 में 03.1.89 को प्रवेश लिया था। प्रवेश के समय उसके संरक्षक द्वारा जूनियर हाई स्कूल बल्लापुर द्वारा निर्गत टी.सी. में रिजवानुर्रहमान की जन्म तिथि 05.07.1978 दर्ज होने के आधार पर विद्यालय के अभिलेखों में रिजवानुर्रहमान की जन्म तिथि 05.07.78 अंकित है। उनके द्वारा न्यायालय से नोटिस प्राप्त होने पर एस.आर. रजिस्टर, गजट हाई स्कूल वर्ष 1991 में तथा उपस्थिति पंजिका मूल से मिलान कर प्रस्तुत की गयी, जिस पर प्रदर्श क-1 ता प्रदर्श क-4 डाला गया। उक्त छात्र का विद्यालय के प्रवेश रजिस्टर में कमांक सं0-65 के छात्र पंजिका 6360 पर उसकी जन्म तिथि 05.07.1978 अंकित होने का साक्ष्य दिया गया है।

जिला विद्यालय निरीक्षक उन्नाव से प्राप्त रिपोर्ट के अनुसार कथित अपचारी रिजवानुर्रहमान उर्फ अज्जू का गजट व मैदीकुलेशन प्रमाण पत्र हस्ताक्षरित करने के उपरान्त पत्रावली पर संलग्न है। इसके अतिरिक्त कथित अपचारी किशोर के संरक्षिका माता श्रीमती रविया बेगम पत्नी करीमुनर्रहमान उर्फ औलिया मियों को परीक्षित कराया गया है। इस साक्षी ने अपनी मुख्य परीक्षा में जो कथन किया है कि उसमें महत्वपूर्ण कथन यह है कि जब उसकी शादी औलिया मियों के साथ हुई थी, तब उनकी सबसे छोटी लड़की 9 माह की थी। अज्जू से छोटी तीन लड़कियों हैं। रिजवानुर्रहमान उर्फ अज्जू का नाम स्कूल लिखवाने पिता गये थे, वह नहीं गयी थी। अज्जू ने कक्षा 10 गंजमुरादाबाद इण्टर कालेज से पास किया था। स्कूल के अतिरिक्त अज्जू के जन्म का कोई प्रमाण पत्र उनके पास होने से इन्कार किया गया है।

उक्त साक्षियों का साक्ष्य अंकित किये जाने के उपरान्त अभियोजन द्वारा अपचारी की ओर से डी.सी.के.एम. इण्टर कालेज गंजमुरादाबाद उन्नाव में दाखिला के समय प्रस्तुत टी.सी. जूनियर हाई स्कूल बल्लापुर गंजमुरादाबाद को फर्जी होने के आधार पर चुनौती दी गयी, जिसके सम्बंध में जूनियर हाई स्कूल बल्लापुर के सहायक अध्यापक नील कमल को परीक्षित कराया गया, जिनके द्वारा अभिलेखों के आधार पर दिये गये साक्ष्य में जूनियर हाई स्कूल गंजमुरादाबाद में शिक्षा ग्रहण करना नहीं

पाया गया। तदोपरान्त वादी मुकदमा को पुनः नोटिस इस आशय की जारी की गयी कि हाई स्कूल प्रमाण पत्र में अंकित जन्म तिथि 05.07.1978 से भिन्न यदि कोई जन्म तिथि कथित अपचारी रिजवानुरहमान उर्फ अज्जू की है तो वह नियत दिनांक पर प्रस्तुत करे, किन्तु वादी मुकदमा के समक्ष बोर्ड उपस्थित आने के उपरान्त अभियोजन को इस बावत कई अवसर दिये जाने के बावजूद भी उनके द्वारा हाई स्कूल प्रमाण पत्र में अपचारी अज्जू के अंकित जन्म तिथि से भिन्न कोई अन्य जन्म तिथि का साक्ष्य प्रस्तुत नहीं किया जा सका।

उल्लेखनीय है कि कथित अपचारी किशोर रिजवानुरहमान उर्फ अज्जू की ओर से अपने जन्म तिथि के बावत हाई स्कूल प्रमाण पत्र दाखिल किया गया है, जिसे सम्बंधित विद्यालय के प्रधानाचार्य एवं जिला विद्यालय निरीक्षक की रिपोर्ट से सही होने की पुष्टि की गयी है। डी.सी.के.एम. इण्टर कालेज बॉगरमउ में कथित अपचारी अज्जू का कक्षा 9 व 10 में अध्ययन कर हाई स्कूल परीक्षा पास किया जाना साक्ष्यों से साबित किया जा चुका है। ऐसे में किशोर न्याय (बालको के देखरेख व संरक्षण) अधिनियम 2000 में उल्लिखित प्रावधानों के अनुसार मैट्रिकुलेशन प्रमाण पत्र जो कि प्राथमिक साक्ष्य है के साबित होने के उपरान्त अन्य किसी साक्ष्य के ग्रहण किये जाने की आवश्यकता प्रतीत नहीं होती है। जहाँ तक वादी मुकदमा का यह तर्क है कि उसके द्वारा डी.सी.के.एम. इण्टर कालेज में जिस टी.सी. के आधार पर दाखिला लिया गया था वह फर्जी है, तो इसके लिये वादी मुकदमा कथित अपचारी अथवा उसके संरक्षक के विरुद्ध अलग से कार्यवाही कर सकता है, किन्तु मैट्रिकुलेशन प्रमाण पत्र जिसमें उल्लिखित अपचारी के जन्म तिथि जो कि सम्बंधित विद्यालय के प्रधानाचार्य एवं जिला विद्यालय निरीक्षक के साक्ष्यों से साबित की जा चुकी है, किशोर न्याय अधिनियम के प्रावधानों के अनुसार प्राथमिक स्तर का साक्ष्य है और जब प्राथमिक स्तर का साक्ष्य पत्रावली पर मौजूद है तो किसी अन्य साक्ष्य को ग्राह्य किया जाना सुसंगत नहीं होगा। वादी मुकदमा द्वारा उक्त जन्म तिथि से भिन्न अपचारी की अन्य कोई जन्म तिथि होने का साक्ष्य नहीं दिया गया है। प्रस्तुत मामले के तथ्य एवं परिस्थितियों तथा पत्रावली पर उपलब्ध साक्ष्यों के आधार पर बोर्ड इस निष्कर्ष पर पहुँचती है कि कथित अपचारी रिजवानुरहमान उर्फ अज्जू के मैट्रिकुलेशन प्रमाण पत्र में अंकित जन्म तिथि दिनांक 05.07.1978 है, और घटना का दिनांक 20.05.1995 होना दर्शित है। ऐसे में घटना के दिनांक पर किशोर अपचारी 16 वर्ष 10 माह 15 दिन होना पाया जाता है। प्रस्तुत किये गये शैक्षिक अभिलेखों एवं उपलब्ध साक्ष्यों से घटना के दिनांक पर अपचारी की आयु 18 वर्ष से कम पाया गया है। अतः अपचारी की ओर से प्रस्तुत प्रार्थना पत्र बावत किशोर घोषित करने स्वीकार किये जाने योग्य है।

आदेश

प्रार्थना पत्र दिनांकित 26.11.18, अ.सं. 282/95, अन्तर्गत धारा 307, 504 भा.द.सं. थाना बॉगरमउ, जिला उन्नाव के मामले में घटना के दिनांक 20.05.1995 पर अपचारी रिजवानुरहमान उर्फ अज्जू को किशोर न्याय बोर्ड द्वारा किशोर घोषित किया जाता है। सर्व सम्बंधित सूचित हो। तदोपरान्त कार्यालय नियमानुसार आदेश की प्रति माननीय उच्च न्यायालय को प्रेषित करना सुनिश्चित करें।"

14. Considered the submissions advanced by learned counsel for the contesting parties and perused the records.

15. It would be apt to indicate that it is a settled proposition of law that the testimony/evidence of injured witness would prevail over the

testimony of other witnesses and the evidence available on record. The testimony/evidence of injured witness should not be ignored. The evidence of an injured witness has greater evidentiary value and unless compelling circumstances exist, his statement is not to be discarded lightly. The evidence of injured witness cannot be doubted on account of embellishment in natural conduct or minor contradictions.

16. In the instant case, injured Kamaluddin (P.W.1), before the trial Court, in specific terms stated that gun-shot injury was caused by the appellant and his statement is also supported by medical evidence on record including medico-legal report and X-ray plate duly proved by Dr. Y.S. Sawan (P.W.4) and Dr. Majhar Hussain (P.W.5) and in cross-examination, these witnesses remained intact.

17. For the reasons aforesaid, this Court finds no error in the judgment, under appeal, dated 07.08.1998 passed by IIIrd Additional Sessions Judge, Unnao in Session Trial No. 788 of 1995.

18. However, in the facts and circumstances aforesaid it would be apt to take note of the observations made by Hon'ble Apex Court in the judgment passed in the case of **Karan Alias Fatiya Vs. State of Madhya Pradesh** reported in (2023) 5 SCC 504, whereby Hon'ble Supreme Court approved the view taken in the judgment(s) passed in the case of **Jitendra Singh Vs. State of U.P.** reported in (2013) 11 SCC 193, **Mahesh Vs. State of Rajasthan** reported in (2021) 18 SCC 582 and **Satya Deo Vs. State of U.P.** reported in (2020) 10 SCC 555 as also the provisions of Juvenile Justice (Care and Protection of Children) Act, 1986, according to which maximum punishment which could be awarded is three years imprisonment.

19. Relevant portion of the judgment passed in the case of **Mahesh (supra)** is extracted herein-under:

under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "Act of 2000") on the date of commission of the crime i.e. on 12th May, 2001 were tried in a regular Criminal Court and found guilty of offences punishable Under Sections 323, 324, 325, 427, 455 read with Section 149 of the Indian Penal Code, 1860. Both the accused Appellants were acquitted of the offence punishable Under Section 302 Indian Penal Code. The conviction Under Section 455 Indian Penal Code resulted in a sentence of rigorous imprisonment of three years which is the maximum of the punishments imposed on the accused Appellants. The said conviction and sentences have been affirmed in appeal by the High Court.

3. The plea of juvenility of the accused Appellants was taken before this Court for the first time. Accordingly, notices were issued to the State to respond to the said claim of the accused Appellants. In the reply filed by the State the age of the accused Appellants, as claimed, on the date of occurrence was admitted by the State. The accused - Appellants, therefore, were juveniles on the date of occurrence of the offence(s).

4. In the aforesaid facts, two questions arise for determination in the present appeals before us. The first is with regard to the validity/correctness of the conviction recorded by the learned trial Court and affirmed by the High Court and, secondly, if the conviction to be maintained what should be the appropriate measure of punishment/sentence and whether the same should be imposed by this Court or the matter be remanded to the Juvenile Justice Board in accordance with the provisions of Section 20 of the Act of 2000.

5. The position in law in this regard is somewhat unsettled as has been noticed and dealt with by this Court in *Jitendra Singh alias Babboo Singh and Anr. v. State of Uttar Pradesh* (2013) 11 SCC 193 wherein in paragraphs 24 to 27 four categories of cases have been culled out where apparently different approaches had been adopted by this Court. The net result is summed up in paragraph 28 of the aforesaid report which explains the details of the categorization made in the earlier paragraphs of the said report. Paragraph 28 of the said report, therefore, would require a specific notice and is reproduced below:

"28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty

of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence."

6. The validity of the conviction in respect of the incident which occurred almost two decades back, in our considered view, ought to be decided in these appeals and the entire of the proceedings including the punishment/sentence awarded should not be interfered with on the mere ground that the accused Appellants were juveniles on the date of commission of the alleged crime. Judicial approaches must always be realistic and have some relation to the ground realities. We, therefore, adopt one of the possible approaches that has been earlier adopted by this Court in the four categories of cases mentioned above to examine the correctness of the conviction of the accused Appellants under the provisions of the Indian Penal Code, as noticed above.

7. In this regard, having perused the materials on record we find no ground whatsoever to take a view different from what has been recorded by the learned trial Court and affirmed by the High Court. The conviction of the accused Appellants Under Sections 323, 324, 325, 427, 455 read with Section 149 Indian Penal Code accordingly shall stand affirmed.

8. This will bring us to a consideration of the sentence to be awarded. Here again, in the four categories of cases that have been noticed in Jitendra Singh (supra) and in several subsequent decisions of this Court in Abdul Razzaq v. State of Uttar Pradesh (2015) 15 SCC 637, Mohd. Feroz Khan alias Feroz v. State of Andhra Pradesh (2015) 16 SCC 186, Mumtaz alias Muntyaz v. State of Uttar Pradesh (2016) 11 SCC 786 and Mahendra Singh v. State of Rajasthan (2016) 16 SCC 312 different approaches have been adopted. In some cases, the question of punishment has been left to be determined by the Juvenile Justice Board in view of the provisions of

Section 20 of the Act of 2000. In other cases, the issue of punishment has been dealt with by the Court having regard to the fact that on the date when the Court had considered the issue the juvenile(s) have advanced in age.

9. The present is a case where the accused Appellants though juveniles on the date of commission of the alleged crime are, as on today, middle aged persons. The accused Appellant - Mahesh in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 2934 of 2015 had undergone the custody for a period of nearly one year whereas the accused Appellant - Arjun in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 5370 of 2015 had suffered custody for about eight (08) months. The maximum sentence, as already noted, is three years. Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused Appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused Appellants, because of their age as on today, cannot be sent."

20. Relevant portion of the judgment passed in the case of **Karan Alias Fatiya (supra)** is extracted herein-under:

"33. The above judgments relate to an offence covered by either the Juvenile Justice Act, 1986 or the 2000 Act. We now proceed to briefly discuss the provisions under the 2015. Act. Section 9 of the 2015 Act is already reproduced in the earlier part of this judgment. According to Sub-section (3) of Section 9 of the 2015 Act, the Court which finds that the person who committed the offence was a child on the date of commission of such offence would forward the child to the JJB for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect. This does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be juvenile or a child, would also lose its effect rather it is only the sentence if any passed by the Court would be deemed to have no effect.

34. There is another reason why a trial conducted and conviction recorded by the Sessions Court would not be held to be vitiated in law even though subsequently the person tried has been held to be a child.

35. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court would have been completely excluded not only Under Section 9 of the 2015 Act but also Under Section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, Under Section 25 of the 2015 Act, it is clearly provided that any proceeding pending before any Board or Court on the date of commencement of the 2015 Act shall be continued in that Board or Court as if this Act had not been enacted.

36. Section 25 is reproduced hereunder:

25. Special provision in respect of pending cases. - Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.

37. Having considered the statutory provisions laid down in Section 9 of the 2015 Act and also Section 7A of the 2000 Act which is identical to Section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the Accused who has committed a heinous offence and who did not claim juvenility before the Trial Court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in

conflict with law during his stay in any of the institutions defined under the 2015 Act.

38. In view of the above discussion and the position in law as laid down by the aforesaid judgments and many others referred to in the above judgments, we approve the view taken by this Court in the case of Jitendra Singh (supra), Mahesh (supra) and Satya Deo (supra).

39. For all the reasons recorded above, it is ordered as follows: The conviction of the Appellant is upheld; however, the sentence is set aside. Further as the Appellant at present would be more than 20 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. Appellant is in judicial custody. He shall be released forthwith. The impugned judgment shall stand modified to the aforesaid extent."

21. Upon considering the aforesaid including the date of incident i.e. 20.05.1995, the age of the appellant at the time of commission of crime i.e. 16 years 10 months and 15 days, as per the order dated 07.03.2019 passed by Juvenile Board, District - Unnao, and the present age of the appellant i.e. about 46 years (forty six years), the conviction of the appellant is upheld and in view of the present age of the appellant i.e. about 46 years as also efflux of time since the date of occurrence, there would be no requirement of sending the appellant to Juvenile Justice Board or other child care facility or institution and accordingly, the sentence awarded by the trial Court is hereby modified to one already undergone and fine of Rs. 5,000/-, which shall be deposited if already not deposited, within a period of one months from today, failing which the same shall be recovered as per law.

21. The instant appeal is **partly allowed**.

Order Date :- 24.5.2024

Mohit Singh/-