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

+ **CRL.A. 467/2000**

**MAHESH**

..... Appellant

Represented by: Mr.Bipin Kumar Jha, Adv.

versus

**STATE OF DELHI ADMINISTRATION**

..... Respondent

Represented by: Mr.Varun Goswami, APP with  
Insp.J.P.Meena, PS Nangloi.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

**28.03.2016**

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CrI.M.A.5191/2016

Exemption allowed subject to just exception.

CRL.A. 467/2000 & CrI.M.A. 5190/2016

1. Appellant has been convicted for offence punishable under Section 302 IPC on the strength of the dying declarations made by his sister-in-law Ms.Nani W/o Shankar vide the impugned judgment dated April 29, 2000 and directed to undergo sentence of imprisonment of life vide the impugned order on sentence dated May 06, 2000.
2. During the pendency of the present appeal, the applicant has filed an application being CRL.M.A.5190/2016 for determination of his age as he claims himself to be juvenile on the date of alleged incident i.e. April 26, 1997. A verification report has been filed by SHO P.S. Nangloi along with necessary documents. As per School certificate, Mahesh was admitted on

July 14, 1987 vide registration No.127 in first standard, however since he was continuously absent after May 16, 1991 his name was struck off from the rolls of the School with effect from July 31, 1991. Date of birth of Mahesh noted in the School register is July 09, 1981. The said certificate is accompanied by the application for admission and his results of the year 1987, 1988, 1989, 1990 and 1991. In view of the material placed upon record it is amply clear that the date of birth of Mahesh is July 09, 1981.

3. The alleged offence took place on the intervening night of April 26-27, 1997. Thus, Mahesh was less than 16 years of age on the date of alleged incident.

4. It is trite law that the plea of juvenility can be raised at any stage of proceedings and even after the proceedings have culminated till the Supreme Court.

5. As per the Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 in short the JJ Rules in every case concerning a child or a juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or Board by seeking the evidence by obtaining:

*“(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;*

*(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

*(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought*

*from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin or one year.”*

6. Rule 12 (3) of the JJ Rules also states that while passing orders in such cases and regarding a finding in respect of the age either by the evidence specified in any of the clauses (a) (i) (ii) (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. Thus in the absence of matriculation or equivalent certificate, the Court can look into the date of birth certificate from the school first attended and in the absence thereof take into consideration the birth certificate given by a Corporation or a Municipal Authority or a Panchayat. Rule 12 prescribes the procedure to be followed in determining the age however, while following this procedure the rule of evidence with regard to the reliability of the document cannot be given a go by and the best evidence should be relied upon. Thus in case the age mentioned in the matriculation certificate or the date of birth certificate from the school first attended is without the basis of any contemporaneous document and renders unreliable on a prima facie inquiry, the court can take into consideration the birth certificate given by a Corporation or a Municipal Authority or a Panchayat if the same is contemporaneous in nature and more authentic.

7. The issue thus arises as to how the benefit of juvenility can be extended to the Appellant in a case where the offences charged have been

proved beyond reasonable doubt by the Prosecution. In the decision reported as AIR 1986 SC 1329 Bhoop Ram vs. State of U.P. the Supreme Court held:

*“7. On a consideration of the matter, we are of the opinion that the appellant could not have completed 16 years of age on 3-10-1975 when the occurrence took place and as such he ought to have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act 1951 and dealt with under Section 29 of the Act. We are persuaded to take this view because of three factors. The first is that the appellant has produced a school certificate which carries the date 24-6-1960 against the column 'date of birth'. There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars. The Sessions Judge has failed to notice this aspect of the matter and appears to have been carried away by the opinion of the Chief Medical Officer that the appellant appeared to be about 30 years of age as on 30-4-1987. Even in the absence of any material to throw doubts about the entries in the school certificate, the Sessions Judge has brushed it aside merely on the surmise that it is not unusual for parents to understate the age of their children by one or two years at the time of their admission in schools for benefits to the children in their future years. The second factor is that the Sessions Judge has failed to bear in mind that even the Trial Judge had thought it fit to award the lesser sentence of imprisonment for life to the appellant instead of capital punishment when he delivered judgment on 12-9-1977 on the ground the appellant was a boy of 17 years of age. The observation of the Trial would lend credence to the appellant's case that he was less than 10 years of age on 3-10-1975 when the offences were committed. The third factor is that though the doctor has certified that the appellant appeared to be 30 years of age as on 30-4-1987, his opinion is based only on an estimate and the possibility of an error of estimate creeping into the opinion cannot be ruled out. As regards the opinion of the Sessions Judge, it is mainly based upon the report of the Chief Medical Officer and not on any independent material.*

*On account of all these factors, we are of the view that the appellant would not have completed 16 years of age on the date of the offences were committed. It therefore follows that the appellant should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment when he was convicted by the Sessions Judge under various counts.*

8. *Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Children Act for being detained there. In a somewhat similar situation, this Court held in Jayendra v. State of U.P. 1982 CriLJ 1000 that where an accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith. Accordingly, in this case also, we sustain the conviction of the appellant under all the charges framed against him but however quash the sentence awarded to him and direct his release forthwith. The appeal is therefore partly allowed in so far as the sentence imposed upon the appellant are quashed."*

8. As per Section 18 of the Juvenile Justice (Care and Protection of Children) Act 2000 in short the JJ Act or even the JJ Act of 2015 the maximum period for which a child can be kept in a reformation home is three years. The nominal roll of Mahesh reflects that Mahesh had undergone four years of imprisonment before his sentence was suspended by this Court vide order dated November 16, 2000. Thus no useful purpose would be served by remanding the matter to the Juvenile Justice Board.

9. Consequently, we dispose of the appeal and the application by upholding the judgment of conviction however setting aside the order on

sentence as per provisions of Section 19 of the JJ Act 2000 and Section 24 of the JJ Act 2015 which provide that no disqualification would be attached to the Appellant. The appellant who is on bail is set free. His bail bond and surety bond are cancelled.

10. T.C.R. be returned.

11. Copy of the judgment be sent to the Superintendent, Central Jail, Tihar for updation of the Jail record.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**MARCH 28, 2016**

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