

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.315 of 1995

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Pushpesh Pushkar, son of Sri Bishwambhar Kumar Singh, resident of village
Amer, P.S. Bidupur, District Vaishali at Hajipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Ramesh Singh

For the Respondent/s : Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

18 12-10-2017 Heard Sri Ramesh Singh, learned counsel for the
appellant and Sri Ajay Mishra, learned Additional Public
Prosecutor.

The present appeal was filed against the judgment of
conviction and sentence dated 13.9.1995 passed in Sessions
Trial No. 93 of 1994 (arising out of Bidupur P.S. Case No.
221 of 1993) passed by learned 1st Additional Sessions Judge,
Vaishali at Hajipur. By the said judgment the appellant was
convicted for offence under section 376/511 of the Indian Penal
Code, 1860 (hereinafter referred to as “I.P.C.”) and Section
302 of the I.P.C. and sentenced to undergo rigorous
imprisonment for seven years under section 376/ 511 of the
I.P.C. and he was further sentenced to undergo rigorous



imprisonment for life under section 302 of the I.P.C. Both the sentences were directed to run concurrently.

The present appeal was admitted on 16.10.1995 and his prayer for bail was rejected; and finally vide order dated 20.07.2001 an interlocutory application vide I.A. No. 368 of 2001 was filed for granting bail, which was allowed and since then the appellant is on bail. During pendency of this appeal, appellant filed an interlocutory application vide I.A. No. 698 of 2015 claiming his juvenility at the time of occurrence. In the case occurrence had taken place on 27.11.1993. The appellant claimed that his date of birth was 01.03.1976 and as such, on the date of occurrence he was juvenile. On interlocutory application i.e. I.A. No. 698 of 2015 a division bench of this court after hearing directed the Juvenile Justice Board, Vaishali (hereinafter referred to as "J.J.B.") to hold an enquiry into the claim of juvenility of the appellant and thereafter, the J.J.B. conducted an enquiry and has sent its report dated 30.05.2016. The enquiry report of the J.J.B. recorded specific finding that on the date of occurrence the appellant was 17 years 9 months and 26 days. Meaning thereby, that he was below 18 years. On the basis of report of J.J.B., Sri Ramesh Singh, learned counsel for the appellant has argued that the appellant is entitled to get



the benefit of juvenility in view of the provision contained in the Juvenile Justice (Care and Protection of Children) Act, 2000 . He has also relied on a judgment of the Hon'ble Apex Court reported in **2014 (2) PCCR 240 (Ketankumar Gopalbhai Tandel vs. State of Gujarat)** to the extent that if on the date of occurrence an accused was below 18 years he shall be considered as juvenile and sentence imposed by the trial court can be interfered with. Sri Ramesh Singh , learned counsel for the appellant at Bar has stated that he is not assailing the order of conviction. He submits that at the moment, he is only assailing the order of sentence since the appellant on the date of occurrence was juvenile.

Sri Ajay Mishra, learned Additional Public Prosecutor by way of referring to materials available on record including the evidences submits that so far conviction is concerned, that has been based on the basis of evidences, which were directly indicative of the fact that appellant had committed the crime for which conviction order has been passed, however on the point of juvenility, he has not disputed the settled principle of law.

Besides hearing learned counsel for the parties, we have perused the materials available on record including the evidences as well as the judgment impugned. So far question of



juvility is concerned, now the point regarding the age up to 18 years to be considered as juvenile has already been approved by number of judgments of the Apex Court as well as this court. This issue was initially examined by the Apex Court in a case reported in **(2010) 5 SCC 344 [(Dharambir vs. State (NCT of Delhi)]** which was considered by the Apex Court in a case reported in **2014 (2) PCCR 240 (Ketankumar Gopalbhai Tandel vs. State of Gujarat)**. The Supreme Court has also considered the said issue in detail in a case reported in **(2013)11 SCC 193 (Jitendra Singh alias Babboo Singh vs. State of Uttar Pradesh** and after discussing the issue in detail in paragraph nos. 31, 32, 33, 34, 57 and 60 held as follows:-

“31. In the present case, the offence was committed by the Appellant when the Juvenile Justice Act, 1986 was in force. Therefore, only the “punishments” not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him. This is the requirement of Article 20(1) of the Constitution. The “punishments” provided under the Juvenile Justice Act, 1986 are given in Section 21 thereof and they read as follows:

“21. *Orders that may be passed regarding delinquent juveniles.*--(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit--

(a) allow the juvenile to go home after advice or admonition;

(b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such



parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home--

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile, for the period until he ceases to be a juvenile:

Provided that ...

Provided further that ...

(e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under Clause (b), Clause (c) or Clause (e) of Sub-section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

Provided that ...

(3) - (4) * *

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32. A perusal of the "punishments" provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the Appellant, advising or admonishing him [clause (a)] is hardly a "punishment" that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the Appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [clause (b)]. For the same reason, the Appellant cannot be released on probation of good conduct under the care of a fit institution [clause (c)] nor can he be



sent to a special home Under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (d)]. The only realistic punishment that can possibly be awarded to the Appellant on the facts of this case is to require him to pay a fine under Clause (e) of Section 21(1) of the Juvenile Justice Act, 1986.

33. While dealing with the case of the Appellant under IPC, the fine imposed upon him is only Rs. 100/-. This is ex facie inadequate punishment considering the fact that Asha Devi suffered a dowry death.

34. Recently, one of us (T.S. Thakur, J.) had occasion to deal with the issue of compensation to the victim of a crime. An illuminating and detailed discussion in this regard is to be found in *Ankush Shivaji Gaikwad v. State of Maharashtra*. Following the view taken therein read with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the Appellant and the compensation that should be awarded to the family of Asha Devi.

57. The Appellant was a juvenile on the date of the occurrence of the incident. His case has been examined on merits and his conviction is upheld. The only possible and realistic sentence that can be awarded to him is the imposition of a fine. The existing fine of Rs. 100/- is grossly inadequate. To this extent, the punishment awarded to the Appellant is set aside. The issue of the quantum of fine to be imposed on the Appellant is remitted to the jurisdictional Juvenile Justice Board. The jurisdictional Juvenile Justice Board is also enjoined to examine the compensation to be awarded, if any, to the family of Asha Devi in terms of the decision of this Court in *Ankush Shivaji Gaikwad*.

60. Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection



of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the Appellant and the compensation that should be awarded to the family of Asha Devi. Of course, in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the Appellant has undergone some period of incarceration.”

This court has also examined the same issue in Cr. Appeal (DB) No. 267 of 1989 and Cr. Appeal (DB) No. 279 of 1989 by its judgment dated 03.08.2017. In the present appeal by order dated 01.09.2015 the J.J.B. was directed to enquire the claim of juvenility of the appellant and in compliance with the order of this court report of the J.J.B. has been received. In the report dated 30.05.2016 in its concluding paragraph it is held as follows:-

“Thus on considering the aforesaid certificate alongwith the verification report, this Board is unanimously of the view that it contains the correct date of birth of the petitioner Pushpesh Pushkar. Since the date of occurrence, as recorded in the F.I.R of this case, is 27.12.1993, the petitioner is found to be aged 17 years 9 months and 26 days which is below 18 years, on that date. As such, the petitioner is hereby declared juvenile on the day of the occurrence.”

J.J.B. has categorically held that the appellant on the date of occurrence was juvenile. Since the learned counsel for the appellant has not assailed the judgment of conviction and we have also found no error in the judgment of conviction,



there is no reason to interfere with the judgment of conviction and as such, appeal against conviction stands dismissed. However, considering the report of J.J.B. showing the appellant as juvenile on the date of occurrence, his sentence passed by the learned trial judge is hereby set aside and the matter is remitted back to the J.J.B. for imposing appropriate fine and compensation which is required to be paid to the victim / family of the victim.

With above observation, the judgment of conviction is approved and the sentence is set aside.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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