

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.27 of 2014

Arising Out of PS.Case No. -387 Year- 1999 Thana -BARH District- PATNA

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1. Ajay Kumar, son of Dawarika Yadav @ Ganauri Yadav @ Pukar Yadav @ Pokhar Yadav, resident of Village- Masud Bigha, Ward No. 2, P.S- Barh, District- Patna.
 2. Vijay Kumar, son of Dawarika Yadav @ Ganauri Yadav @ Pukar Yadav @ Pokhar Yadav, resident of Village- Masud Bigha, Ward No. 2, P.S- Barh, District- Patna.
 3. Dawarika Yadav @ Ganauri Yadav @ Pukar Yadav @ Pokhar Yadav, son of Late Ramu Yadav, resident of Village- Masud Bigha, Ward No. 2, P.S- Barh, District- Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajendra Narayan, Sr.Advocate with
Mr. Nawal Kishore Prasad, Advocate
For the State : Mr. Bipin Kumar, APP
For the Informant : Mr. Anil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 07-04-2017

This appeal is directed against the judgment and order dated 21.12.2013 passed by Ad hoc Additional Sessions Judge, 1st Barh, Patna in Sessions Trial No. 388 of 2002 by which he has convicted the appellants under Sections 341, 323, 447, 325 and 307/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three months under Section 341 IPC, six months under Section 323 IPC, further six months under Section 447 IPC and ten years under Section 307/34 IPC and five years under Section 325 IPC with a fine of Rs.10,000/- to each of the appellants and in case of default of payment of fine, appellants were further



directed to serve three months simple imprisonment and also the appellants were directed to pay a compensation of Rs.20,000/- to the victim Dharmveer Kumar.

2. The prosecution case, in short, is that on 23.11.1999 at about 4.45 P.M. while Deoki Devi @ Rampati Devi, the informant (P.W.7), was picking grass (Nikauni) with her son Dharmveer Kumar in her mustered field, in the meantime appellant Dwarika Yadav @ Pokhar Yadav, with two oxen arrived there and the oxen began to graze the mustered crop in her field on which, the informant protested and hot discussions took place between Dwarika Yadav and informant. Further prosecution case is that accused Dwarika Yadav called his son with weapon, thereupon two sons of Dwarika Yadav, namely, Ajay Kumar armed with *samath* and Vijay Kumar armed with lathi, came there and on the order of Dwarika to kill Dharmveer Kumar, accused Ajay assaulted with *samath* on the head of Dharmveer, due to which he fell down and became senseless and other accused Vijay also assaulted Dharmveer and considering him as dead, they assaulted Deoki Devi also with weapons in their hands. It is also the prosecution case that thereafter both the injured were taken to Sub-Divisional Hospital, Barh (hereinafter referred to as 'S D Hospital, Barh') and after first aid, Dharmveer Kumar was referred to Patna Medical College & Hospital (hereinafter referred to 'PMCH') for better treatment and where fardbeyan was recorded on 27.11.1999.

3. On the basis of the aforesaid fardbeyan Barh P.S.Case



No. 387 of 1999 dated 28.11.1999 was instituted against the appellants under Sections 341, 447, 323, 325 and 307/34 of the Indian Penal Code and after investigation, charge-sheet was submitted under the aforesaid sections, accordingly cognizance of the offences was taken up. Thereafter the case was committed to the court of sessions, which ultimately came on transfer to Sri Deo Nandan Singh, Ad-hoc 1st Additional District and Sessions Judge, Barh, for trial and disposal.

4. During trial, altogether 13 witnesses have been examined on behalf of the prosecution. P.W.1 is Ram Maya Singh, P.W.2 is Rajdeo Singh, P.W.3 is Ajit Kumar, P.W.4 is Ramjatan Kumar, P.W.5 is Surendra Prasad, P.W.6 is Pramhansh Kumar, P.W.7 is Rampati Devi alias Deoki Devi (informant), P.W.8 is Dharmveer Kumar (injured), P.W.9 is Mohun Lal Yadav (I.O. of the case), P.W.10 is Dr. Jainendra Kumar, P.W.11 is Murari Prasad, P.W.12 is Dr. Girish Kumar Saran and P.W.13 is Brijnandan Prasad. Out of the above witnesses, P.W.1 Ram Maya Singh is a formal witness, who has proved the formal FIR (Ext.1) and P.W.2 Rajdeo Singh is also a formal witness, who has proved the Fardbeyan of the informant (Ext.2).

5. Besides the oral evidence, the following documents have been taken into evidence on behalf of the prosecution, they are Ext.1, formal FIR, Ext.2, Fardbeyan, Ext.3, requisition of I.O. for Injury report, Ext.4, Injury report of Dharmveer Kumar of S.D.H., Barh, Ext.5, details of treatment and O.D. register of PMCH, Ext.6,



Bed Head Ticket of PMCH, Ext.7, Prescription of medicines and medical aid, and Ext.8, treatment chart of PMCH.

6. It would appear that charges have been framed under Sections 341, 323 and 447 of the Indian Penal Code against all the appellants and further appellant Ajay Kumar has been charged under Sections 307 and 325 IPC. Appellants Vijay Kumar and Dawarika Yadav have been further charged under Section 307/34 IPC. They all have pleaded not guilty to the charges.

7. Defence of the appellants as per trend of cross examinations of P.Ws. and the statement of appellants under Section 313 of the Code of Criminal Procedure is of complete denial and of false implication as no such occurrence had taken place as alleged by the prosecution and it has further been suggested that Dharmveer Kumar had fell down in the ditch and received injuries.

8. Argument of learned counsel for the appellants is that there is delay of four days in lodging FIR, as occurrence is said to have been taken place on 23.11.1999 but FIR was lodged on 28.11.1999. In spite of the fact that the occurrence is of broad daylight, the place of occurrence is field and possibility of presence of villagers cannot be ruled out but no independent witness has been examined in this case and so far P.Ws. 3 to 6 are concerned, they are related witnesses, which is evident from paragraph-10 of evidence of P.W.3. It has been further argued that prosecution has come with definite case that informant (P.W.7) was assaulted indiscriminately by



the appellants and she had been sent to S.D.Hospital, Barh as well as PMCH but neither her injury report has been brought on record nor Doctors (P.W.10 & P.W.12) have stated about any injury found on the person of informant (P.W.7).

9. It has also been submitted that fardbeyan is a classic example of as to how much prosecution is interested in implicating the appellants as in last portion of the fardbeyan (Ext.2), P.W.7, Deoki Devi (informant) in spite of being an illiterate lady had stated before police that “*MERA BETA DHARMVEER AAVI TAK BEHOSI HALAT ME HAI. ISKO PLASTIC AIR DELSIDE, OXIGEN INHELERAN INTER MERANTELI OTHER TWO CONTENTS LIA HUA HAI*”, whereas P.W.7 (informant) in her evidence in paragraph-5 has admitted that she is an illiterate lady and does not know English.

10. On the basis of above submissions, it has been submitted by learned counsel for appellants that conviction and sentence of appellants are not sustainable in the eye of law.

11. On the other hand, learned APP appearing for the State and learned counsel for the informant have stated that it is well established principle that conviction based on evidence of interested or related witnesses cannot be brushed aside if they are otherwise believable and there is no embellishment in their evidence and are consistent, supported by the medical evidence. It has also been argued by learned APP that in the present case, not only evidences of P.Ws. are consistent on the point of assault and injury but also they are



supported by the evidence of Doctors, P.W.10 and P.W.12 and corroborated by injury report (Ext.5) and Bed Head Ticket (Ext.6). As such, conviction of appellants is just and proper.

12. In the above background, I have to examine the evidences, adduced on behalf of the prosecution. No doubt, from perusal of paragraph-10 of evidence of P.W.3, it appears that P.Ws. 3 to 6 are all related witnesses. However, it is well settled that conviction can be based on evidence of interested witnesses if they are otherwise reliable and corroborated by medical evidence.

13. Above proposition finds support from the decision of Hon'ble Apex Court in the case of **Anvaruddin vs. Shakoor, reported in AIR 1990 SC 1242**, where it has been held in paragraph-8 as follows :

“It is well settled law that evidence of witnesses to the occurrence cannot be thrown overboard merely because they are interested and partisan witnesses. All that the law demands is that their evidence should be scrutinized with great care and caution to safeguard against the normal temptation to falsely implicate others.xxxxxxxx”

and also of decision of the Hon'ble Apex Court in the case of **State of Rajasthan vs. Smt. Kalki & Anr. : AIR 1981 SC 1390** in which the Hon'ble Apex Court has held as follows :

“5A. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a “highly interested” witness because she “is the wife of the deceased”..... For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the



deceased; but she cannot be called an “interested” witness. She is related to the deceased. ‘Related’ is not equivalent to ‘interested’. A witness may be called ‘interested’ only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be ‘interested’. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.”

14. Further Hon’ble Supreme Court in the case of **Sachchey Lal Tiwari vs. State of U.P. : AIR 2004 SC 5039** has dealt with as about non-examination of independent witness and in has been held as follows:

“7. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere ‘chance witnesses’. The expression ‘chance witness’ is borrowed from countries where every man’s home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man’s castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.”

15. From the above, the principle is quite clear that evidence of related/interested witnesses cannot be brushed aside merely on the ground that they are interested witnesses, specially when they are neighbours and their presence at the place of occurrence is natural. In the present case, it is evident from close



scrutiny of the evidences of P.Ws.3 to 6 that they have stated about their presence at the place of occurrence and they have been cross examined at length but in spite of that defence has failed to shake their credibility so far it relates to their presence at the place of occurrence. It is true that P.Ws.3 to 6 are related witnesses and there may be some exaggeration in the evidences of such related witnesses but being so, they would not allow real culprit to go escort free. At best, their evidences require close scrutiny in order to find out truth.

16. So far the delay in lodging FIR as well as mentioning of some medical terms in last portion of fardbeyan is concerned, it is the prosecution version and in the evidences it has also come that injury of P.W.8, Dharmveer Kumar was so serious that after first aid, he was referred to PMCH, Patna, where he was under treatment and in such a situation, the natural conduct is to save the life of P.W.8 first and only after providing him better treatment and after getting over from whole trauma, FIR was lodged. Hence the delay appears to be natural. So far use of medical terms by informant (P.W.7) in fardbeyan is concerned, fardbeyan was recorded by P.W.9 (I.O.), but he has not been cross examined by defence as to whether P.W.7 (informant) had stated so before him or not. Moreover, on those grounds, the whole prosecution case cannot be brushed aside.

17. In the present case, P.W.8 Dharmveer is one of the injured and his evidence shows that occurrence took place due to grazing of ripe mustered crop by the oxen of appellant Dawarika



Yadav in the field of the informant, who is the mother of P.W.8. There was first altercation happened with appellant No.3, and on call, appellant Nos. 1 and 2 appeared armed with Samath and Lathi respectively and appellant No.1 assaulted P.W.8 by Samath on his head and he fell down and became unconscious. This witness was cross examined at length. He had stated in paragraph-13 of his cross examination, that person having “samath” came close to him and assaulted him. There is nothing in his evidence to doubt his credibility so far evidence on assault is concerned.

18. It has been consistently stated by P.Ws. that he (P.W.8) was taken to S.D. Hospital, Barh, and injury report has also been brought on the record (Ext.4) which clearly shows a lacerated wound 1-1/2” x 1/4” x 1/4” on top of scalp of P.W.8 and he was referred to PMCH for further investigation and treatment and he was treated there.

19. It further appears that Dr. Jainendra Kumar has been examined during trial as P.W.10 and his evidence in chief disclosed that injured Dharmveer was brought to PMCH on 23.11.1999 on being referred by S.D. Hospital and he was registered and he then advised for fresh X-Ray of scalp both of LB and AP views which shows depressed treatment of right parietal bone. He also stated as per bed head ticket that Dharmveer (P.W.8) was admitted on 23.11.1999 and discharged on 1.2.2000. He has proved the treatment register (with objection) as Ext.5. His evidence further shows that the injury to



the injured was dangerous to life and it may also lead to paralysis. This witness has been rigorously cross examined and in his cross examination he had stated that only the treating Doctor can say, at the time of his discharge the patient was paralyzed or not, however patient was suffered from convulsion. He has further admitted that neither in the Bed Head Ticket nor in the treatment chart there is no mentioning of the paralysis of injured Dharmveer. His evidence also shows that on 30.1.2000 patient was conscious. Hence, the evidence of P.W.10 supports the testimony of P.W.8, so far, receiving injury on head is concerned and it appears that injury was dangerous to life and it may lead to paralysis also.

20. Apart from that Dr. Girish Kumar Saran, who was Neuro Surgeon at PMCH at that time, has also been examined in this case as P.W. 12 and he has also stated in his evidence that on diagnosis he transferred the patient in EF Unit. This witness has also stated that after discharging from hospital, he had examined P.W.8 on 26.2.2000 and on the basis of the city scan dated 23.11.1999 it was found broken of bone and hemorrhage contusion. This witness has also been cross examined at length but nothing has been brought out to dislodge him. Paragraph-8 of his cross examination shows that the patient was mentally sound on 30.1.2000. There is nothing in his evidence to doubt about injury received by P.W.8.

21. P.W.7 is the informant and mother of P.W.8 and her evidence fully corroborates the evidence of P.W.8 so far assault to



P.W.7 is concerned. Her evidence in chief also shows that appellant Ajay and Vijay also assaulted by lathi and and appellant Dwarika ordered to assault her, on which she was assaulted by all appellants. Her cross examination also shows that she was assaulted by all appellants but there is no injury on the body of P.W.8 except one on head.

22. Apart from the evidence of Doctors, as stated above, I.O. has also been examined in this case as P.W.9 and he has also stated in his evidence in paragraph-3 that he had found the sign of thrashing and also found sign of footsteps at the place of occurrence. This witness has also stated that he had prepared injury inspection report of P.W.8 (Ext.3). This witness has also stated in paragraph-6 that he had not mentioned about injury of Deoki Devi.

23. P.Ws.3 to 6 have been examined in this case as eye witnesses and their evidence, barring minor discrepancies are consistent on the point of assault by appellant Ajay on the head of P.W.8 by samath and then he became unconscious at the place of occurrence.

24. In this case, it is the prosecution version that beside appellant Ajay, other appellants had also assaulted P.W.8, but injury report and the evidence of doctors did not show that any other injury was found on the person of P.W.8 except one on the head.

25. Prosecution story is that the oxen of appellant Dwarika Yadav @ Ganauri Yadav @ Pukar Yadav @ Pokhar Yadav



entered into the field of informant Deoki Devi (P.W.8) and started grazing the crop, on which altercation took place and there is also consistent evidence available on the record, even admitted by the informant (P.W.7) and injured (P.W.8) that altercation took place between the parties. P.W.6 has stated that there was altercation between the parties and they were abusing each other and P.W.8 has even stated that there was hot exchange of words between them and even in cross examination this witness has admitted that there was altercation between them for about one a half minutes. Further prosecution story is that appellant Dawarika Yadav called appellant Nos. 1 and 2 from house, on which appellant Nos. 1 and 2 came armed with samath and lathi respectively and on order of Dawarika Yadav they have assaulted to P.W.8 and P.W.7. However, it appears from evidence of P.W.3, in paragraph-9 Dawarika Yadav was coming with oxen from "Bahiar". However, oxen of Dawarika Yadav entered in the field of informant (P.W.7), prior to Dawarika Yadav and thereafter Dawarika Yadav came in search of oxen.

26. In this case appellant Ajay Kumar has been charged under Section 307 and 325 IPC for assaulting Dharmveer (P.W.8) by samath on head. Further the appellants Nos. 2 and 3 have been charged for assaulting Dharmveer with common intention to kill him under Section 307/34 IPC.

27. On perusal of the charge framed under Section 307/34 IPC against appellants 2 and 3, it appears that following charges have



been framed :-

“That you on or about 23rd Nov, 1999 at village Masudbigha in the field of informant near Kabristan, P.W.Barh, Distt. Patna in furtherance of common intention of all you did an act i.e. assaulted with Samath with such intention that if by that act you have caused the death of Darambir, you would have been guilty of Murder and that you thereby the said act and thereby committed an offence punishable under section 307 and read with section 34 of the Indian Penal Code, and within my cognizance and I hereby direct that you be tried by me on the said charge. ”

There is error apparent in the framing of charge under Section 307/34 IPC as it is not the prosecution case, nor there is any evidence to show that appellants 2 and 3 had assaulted by “samath” rather prosecution case is that they were armed with lathi.

28. Learned counsel for the appellants argued that in the present case, the occurrence as alleged took place at the spur of moment and there was no premeditation. The appellant No.1 though assaulted on head but there is no repetition of assault by appellant No.1 and so far allegation of assault by other appellants is concerned, they have not been charged for assaulting P.W.8 by lathi. Further submission of learned counsel for the appellants is that so far allegation of assault by appellants 2 and 3 is concerned, it appears to be exaggeration in order to implicate the whole family members as even the Doctors (P.W.10 and 12) havenot found any injury on the person of P.W.8 except on head and in the injury report (Ext.4) also there is no mentioning about any other injury on any other part of the body. On the basis of above arguments it has been contended that no



case is made out against appellant No.1, Ajay Kumar under Section 307 IPC nor any case against appellants 2 and 3, Vijay Kumar and Dwarika Yadav under Sections 307/34 IPC and hence their conviction under aforesaid sections cannot be sustained.

29. On the other hand, learned APP has submitted that there is allegation of assault by appellant No.1 on head and so far appellant Nos. 2 and 3 are concerned, they had also assaulted P.W.8 by lathi and there is evidence that appellant No.3 ordered to kill P.W.8, on which appellant No.1 assaulted. There is injury on the vital part of the body which is dangerous to life. As such, there is no infirmity in the judgment convicting the accused appellant No.1 under Section 307 IPC and appellant Nos. 2 and 3 under Sections 307/34 IPC.

30. So far Section 307 IPC is concerned, for the purpose of constituting an offence under that section prosecution has to prove first an evil intent, i.e., knowledge and secondly an act done, i.e., when there is an intent coupled with some overt act in execution thereof, that is sufficient for conviction under Section 307 IPC. So far intention to kill is concerned, the same can be gathered from the circumstances under which the occurrence took place like the altercation before the actual assault, the type of weapon used, nature of injuries and severity of assault.

31. In the present case, there is no evidence of repetition of assault by appellant No.1 by 'samath' which is not a dangerous



weapon. Secondly there is evidence that appellant No.1 had also assaulted P.W.8 when he fell down and P.W.7 (informant) has stated that he had assaulted with lathi though as per prosecution story, he was armed with samath and this makes the above evidence of P.W.7, inconsistent with the prosecution case..

32. There is tendency of witnesses in our country to exaggerate the version in order to make it more serious and to implicate the innocent also in the case and hence, court has to be very cautious, while dealing with such evidence, specially when they are interested/related.

33. Considering the discussions made above, so far conviction of appellant No.1 under Section 307 and conviction of other appellants under Section 307/34 IPC is concerned, in my view, prosecution evidences are not cogent and sufficient to the extent that P.W.8 was assaulted with an intention to kill him.

34. So far conviction Section 325 IPC is concerned, there is evidence available on record to show that assault is on the vital part of the body and injury was dangerous to life and may lead to paralysis and that injury has been attributed to appellant No.1 and there are consistent ocular evidence available on record supported by Medical evidence and also corroborated by the injury report (Ext.4) and Bed Head Ticket (Ext.6).

35. Appellant Nos. 2 & 3 had also been convicted under Section 325 IPC but in absence of any charge under Section 325 IPC



framed against the appellant Nos. 2 & 3, conviction is bad. Further as discussed above, no injury was found on the person of P.W.7, Dharmveer, except one injury on head, hence, so far conviction of appellant Nos. 1 & 2 under Section 325 IPC is concerned, is not sustainable.

36. All the appellants have also been charged under Section 323 IPC for assault to informant Deoki Devi and there are evidence available on record to show that they all assaulted Deoki Devi. It is the prosecution version that Deoki Devi was treated at S.D. Hospital, Barh and even at PMCH, Patna but none of the Doctors (PW.10 and PW.12) has stated about any injury to informant Deoki Devi (P.W.7) nor any injury report has been brought on record nor any explanation has been offered for not producing injury report of Deoki Devi. However, it is true that for offence under Section 323 IPC it is not necessary to prove the injury report, but when it is the prosecution case that she got bleeding injury and P.W.7 had also stated that appellant Ajay and Vijay assaulted on her head, causing bleeding injury, I think that prosecution have either to bring injury report on the record to corroborate the same or ought to have explained the same.

37. Considering the above discussions, conviction of appellants under Section 323 IPC appears to be not sustainable.

38. All the appellants have also been convicted under Sections 341 and 447 IPC and there are sufficient and cogent evidence



available on record that shows appellants tress- passed to the field of Deoki Devi and after restraining P.W.8 was assaulted.

39. Considering the aforesaid facts, so far conviction of appellants under Sections 341 and 447 IPC is concerned, that appears to be just and proper.

40. In this case, at the time of admission of this appeal, a plea was taken by appellants with regard to juvenility of appellant No.1, Ajay Kumar, and this Court vide order dated 29.10.2015 sent the matter before the Juvenile Justice Board, Patna (hereinafter referred to as 'the Board') to decide the juvenility of appellant No.1 and directed the Board to enquire into the matter and submit a report. Pursuant to the direction, the Board initiated enquiry proceedings vide Misc.Case No. 6 of 2015 and after examining the matter and the report of the Medical Board and documents filed, recorded a finding under Section 49 of the Juvenile Justice Act that appellant No.1 was aged 17 years 11 days at the time of occurrence, i.e., 23.11.1999 and sent back the record to this Court. On close scrutiny of report submitted by the Board, it appears, it had examined two Matriculation Certificates of two different dates and called for a report from Medical Board and on the basis of report of Medical Board, found the appellant No.1 17 years 11 days at the time of occurrence.

41. It has been argued on behalf of the appellants that as appellant No.1 was juvenile, he is entitled for protection under the Juvenile Justice (Care and Protection of Children) Act, 2000



(hereinafter referred to as '2000 Act'). As such, even if the appellant No.1 is found to be guilty for any offence but as by now he has already remained in custody for more than three years, hence, his sentence may be set aside and he may be released.

42. In this case, admittedly the occurrence took place on 23.11.1999 and at that time Juvenile Justice Act, 1986 (hereinafter referred to as '1986 Act'), was in force. However, the report of the Board shows appellant No.1 was aged 17 years 11 days on the day of occurrence and plea of the appellant No.1 is that he is entitled for benefit of Section 20 of 2000 Act as after commencement of 2000 Act, in all proceedings and enquiry, penalty shall be governed by 2000 Act. In the above background, let me examine the provisions of 2000 Act.

43. **Section 2(k) of 2000 Act** defines as-

“ “Juvenile” or “child” means a person who has not completed eighteen years of age.”

Section 2(l) says “Juvenile in conflict with law” means a juvenile, who is alleged to have committed an offence and has not completed eighteen years of age.”

So far Section 20 of 2000 Act prior to amendment is concerned, it provides as follows :-

“S.20. Special provision in respect of pending cases- Notwithstanding anything contained in this Act, all proceedings in respect of juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had 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 the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.”

Section 64 of the 2000 Act deals with juvenile in conflict with law, undergoing sentence at commencement of Act and Section 64 prior to amendment provides as follows:

“S.64. Juvenile in conflict with law undergoing sentence at commencement of this Act- In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of a imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of Section 16 of this Act.”

44. The above provisions along with Sections 2, 10, 15 and 69 of the 2000 Act were considered by the Constitution Bench of Hon’ble Apex Court in the case of **Pratap Singh vs. State of Jharkhand :2005(1) PLJR SC 393**, in which it was held as-

“34. We, therefore, hold that the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

35. The net result is :-

(a) The reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.



(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.”

The aforesaid view was followed by the Supreme Court in several other decisions, including in the case of **Bijender Singh vs. State of Haryana : 2005(2) PLJR SC 215.**

45. However, the aforesaid 2000 Act was amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (Act 33 of 2006) which came into force from 22.8.2006, Through it, there was an amendment made in Section 2(l), Section 7A was inserted and in Section 20 as well as in Section 64 of the Act, provisos were added and they are as follows:-

S.2(l) “Juvenile in conflict with law” means a Juvenile who is alleged to have committed an offence and has not completed eighteen years of age on the date of commission of such offence.

7-A. Procedure to be followed when claim of juvenility is raised before any Court.- 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.

Section 20. Child attained age of twenty-one years and yet to completed prescribed term of stay in place of safety.-

“Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation:- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

Section 64 :.....

Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation.- In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case maybe, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.”



46. From the above provisos, it is clear that in all pending cases, including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2 and even if the juvenile ceases to be so on or before the date of commencement of this Act still the provisions of this Act shall apply to that juvenile and, as such, after amendment it appears that the benefit of Section 20 of 2000 Act has also been extended to those juveniles, who have attained the age of 18 years prior to the commencement of 2000 Act. Considering the aforesaid fact, Hon'ble Apex Court in the case of **Hari Ram vs. State of Rajasthan and another : (2009) 13 SCC 211** in paragraph 59 of which it has been held as follows:

“59. The law as now crystallized 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.”

47. However, it appears that after **Nirbhaya Case** in the year 2012 there was shifting in the view of the Legislature, considering the fact that there were cases of juvenile above the age of 16 involves in commission of heinous crime. Due to the aforesaid fact Juvenile Justice (Care and Protection of Children) Act, 2015 has come



into force which was dealing with the cases of juvenile and in place of juvenile in conflict with law expressed and in conflict with law has been introduced.

48. Section 2(12) “**child**” means a person who has not completed eighteen years of age on the date of commission of such offence.

Section 2(13) “**child in conflict with law**” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

Section 2(33) “**heinous offences**” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

Section 2(35) “**Juvenile**” means a child below the age of eighteen years.

49. By virtue of Section 6 of Juvenile Justice Act, 2015 the age of juvenile on the date of commission of offence is relevant and not the date on which he was apprehended.

Section 9(2) proviso as follows :

“In case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such persons, and shall record a finding on the matter, stating the age of the person as nearly as may be:



Provided that such a claim may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.”

Section 15(1) provides - Preliminary assessment into heinous offences by Board.

Section 21. Order that may not be passed against a child in conflict with law.- No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

Section 25 provides – 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.

50. Hence, no doubt, after 2006 amendment in Section 20 of 2000 Act, the appellant No.1 was entitled to be convicted as a Juvenile, and ratio of above decision is also clear.

51. On comparison of the 2000 Act and 2015 Act it appears that in both the Acts juvenile in conflict in law and child in



conflict in law has been provided 18 years on the day of occurrence and in both the Acts there is provision of 7-A in 2015 Act as Section 9(2) proviso: in case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence , the said Court shall make an inquiry, take such evidence as may be necessary. However, though Section 20 of the Act has been incorporated in 2015 Act as Section 25 but the ‘legal fiction’ that has been provided in Section 20 of the Act, i.e., “instead of passing of any sentence in respect of juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act” as if it has been decided on enquiry under this Act that juvenile has committed the offence has not been incorporated in Section 25. Even no Section has been provided for those juveniles who in conflict with law undergoing the sentence at the commencement of the Act like Section 64. Had it been intention of Legislature to apply the provision of 2015 Act so far their trial and other provisions under the Act to the juvenile prior to commencement of Act, naturally they would have provided the legal fiction as was there in Section 20 of 2000 Act or they would have made provision like proviso to Section 20 and also as provided in Section 64 of 2000 Act.



52. Apart from that, by 2000 Act a right has been vested to appellant No.1 to have benefit of Section 20, legal fiction of Section 20 and he is entitled for the sentence to be passed by Juvenile Board and if the 2015 Act is allowed to apply to appellant No.1 it will amount to taking away the right vested on appellant No.1. It is well established principle that any embargo giving with retrospective effect to the statute is allowed that will take away the vested right of person, as such due to the reasons as mentioned above, perhaps, the Legislature has no intention to incorporate the legal fiction in Section 25 and there is no mention of application of 2015 Act on the persons who were juvenile at the time of occurrence under 2000 Act. On the basis of the discussions made above, I can come to a conclusion that appellant No.1 now has been found juvenile at the time of occurrence is entitled for benefit of legal fiction of Section 20 of 2000 Act.

53. Considering the discussions made above, conviction and sentence of appellant No.1 under Section 307 IPC cannot be sustained, hence the same are set aside.

54. However, there are sufficient cogent and reliable evidences available, sustaining his conviction under Section 325 & 447 IPC.

55. I have already come to the conclusion that appellant No.1 is entitled for the benefit of Section 20 of 2000 Act and as per Section 20, once there is finding of guilty, his case has to be referred to Juvenile Board for passing an order of sentence. However, in view



of decisions of Hon'ble Supreme Court in **Upendra Kumar case, reported in 2005 PLJR (SC) 54**, I think that it will be wasteful exercise in sending the case to Juvenile Board, for passing the order of sentence, as appellant No.1 had already remained in custody for more than 3 years, i.e., the maximum period for which he may be sent to Special Home, as such I refrained myself from sending the case to Juvenile Board for passing order of sentence.

56. Considering the discussions made above, conviction of appellant No.1 under Section 325 & 447 IPC in which he is found guilty is upheld, however order of sentence is quashed.

57. So far other appellants, i.e., appellant Nos. 2 and 3 are concerned, on the basis of discussions made above, their conviction and sentence under Sections 307/34, 325 and 323 IPC are set aside.

58. However, considering the discussions made above, their conviction under Sections 341 & 447 is sustained and upheld.

59. From perusal of the record, it appears appellants Nos. 2 and 3 have remained in custody 4 months 11 days and five months nine days respectively. Having regard to their age and considering the fact that occurrence is of the year 1999 and they are facing trauma and pain for 17 long years, their sentences under Sections 341, 323 and 447 IPC of imprisonment as well as fine are modified to the period already undergone only.

60. All the appellants have also been directed to pay a



compensation of Rs.20,000/-. However, in view of the discussions made above, the aforesaid order of compensation is also set aside.

61. With the aforesaid modification in the conviction and sentence with respect to appellants, this appeal is allowed.

62. As the appellant No.1 is in custody, he shall be set at liberty forthwith if not required in connection with any other case. Appellant Nos. 2 and 3 are on bail and the order of sentence with respect to them has been modified to the above extent, i.e., period already undergone in custody, as such, they are directed to be discharged of their bail bonds.

(Vinod Kumar Sinha, J)

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