

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(i) Criminal Appeal No.D-123-DB of 2012 (O&M)

Ved Parkash Appellant

Versus

UT, Chandigarh Respondent

(i) Criminal Appeal No.D-618-DB of 2012 (O&M)

Meena Appellant

Versus

UT, Chandigarh Respondent

Date of Decision : 06.12.2017

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr. P.M.Kansal, Advocate
for the appellants.

Mr. A.S.Virk, Advocate
Public Prosecutor for the respondent-UT, Chandigarh.

RAJ SHEKHAR ATTRI, J.

Both the convicts namely Ved Parkash and Smt. Meena have come up in this appeal by assailing the judgment of conviction and order of sentence dated 11.01.2012, passed by the learned Addl. Sessions Judge, Chandigarh vide which each of them has been convicted and sentenced to undergo imprisonment for life for each offence punishable under Sections 302 of the Indian Penal Code (in short 'the Code') and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each and same quantum of sentence was imposed for the offence under Section 120-B of the Code.

Briefly stated, it is the case of prosecution that Smt. Meena was married with Avdesh (hereinafter referred to as 'the deceased') but she had developed extra merital affair with her co-accused/appellant Ved Parkash and the latter was residing in a rented accommodation. This fact came to the knowledge of her husband Avdesh, who did not tolerate the same. He tried to reason with both the appellants and asked them to desist from such relationship but they continued their liaison treating the deceased as an hurdle. Both the appellants decided to eliminate the deceased. In pursuance of their nefarious design, deceased was called to the house of appellant Ved Parkash at about 3:30 p.m. on 06.11.2010 where he was residing alone. On arrival, he was taken in the rear room and immediately over powered by both the appellants and thrown to the ground. Smt. Meena caught hold of the deceased from his legs and Ved Parkash while sitting on his chest gave a blow on the neck with the knife in his hand. When said Avdesh died, they wrapped his dead body in a red coloured blanket and put his legs in a bag. They made a plan to dispose of the dead body in the night and for the purpose, they locked their room and had gone to arrange money. However, somebody informed the police and both were arrested on 06.11.2010.

While in police custody, appellant Ved Parkash suffered disclosure statement Ex.PU wherein he disclosed that the dead body of Avdesh deceased is lying concealed in his house which is under his lock and key and also that he can recover the same from his house. At the same time, he also disclosed that he kept concealed the blood stained knife in the bushes near Sukhna Puli behind Bapu Dham Colony

and he can get the same recovered. Appellant Meena also suffered disclosure statement Ex.PV to the effect that the dead body of Avdesh is lying wrapped in blanket in back room of house of Ved Parkash. The police had taken both the appellants to the place of occurrence. However, Ved Parkash led the police party to a particular place. He then opened the lock with the key in his possession and got recovered the dead body of deceased Avdesh from the backside room of his house. It was noticed by the Investigating Officer that the dead body bore deep injury marks on the neck and same was lying in the pool of blood and wrapped in a red blanket and his legs were wrapped in a plastic bag. The dead body was taken into possession vide memo Ex.PW. The plastic bag was also taken into possession vide recovery memo Ex.PX. The lock was taken into police possession vide memo Ex.PY. The rough site plan of the place of recovery of dead body i.e. house under possession of Ved Parkash was prepared.

Appellant Ved Parkash also got recovered blood stained knife vide memo Ex.PA/C. Sketch Ex.PA1 of knife was prepared. The site plan of the place from where the knife was recovered was also prepared at the spot which is Ex.PA/D. The clothes worn by Ved Parkash were taken into possession which were sent for analysis to the chemical examination. After analysis, it was found that all the articles were having human blood of group 'AB'.

After completion of investigation, challan was submitted before the learned Area Magistrate, who opined that the case is exclusively triable by the Court of Sessions, as such, the case committed to the Court of Sessions Judge vide order dated 03.03.2011.

In order to afford a fair trial to the appellants, the charge was framed against them for the offence(s) under Section(s) 302/120-B of the Code to which they pleaded not guilty.

In order to prove its case, the prosecution examined **PW1** Mohar Singh, **PW2** Sanjeev Kumar, **PW3** Constable Rajesh Kumar, **PW4** Head Constable Yashpal, **PW5** Dr. Amandeep Singh, **PW6** Dr. Mandeep Singh, **PW7** Dr. Deepak Sharma, **PW8** Head Constable Rajpal Singh, **PW9** Head Constable Rampal, **PW10** Inspector Shree Parkash, **PW11** ASI Sukhwinder Singh, **PW12** Sahib Singh, **PW13** Inspector Jasminder Singh and **PW14** Head Constable Balbir Singh. After closure of the prosecution evidence, the appellants were examined under Section 313 Cr.P.C. In order to afford them an opportunity to explain the incriminating evidence appeared against them. However, they pleaded their false implication.

On appreciation of evidence, both the appellants were convicted and sentenced under Section 302 read with Section 120-B of the Code, as stated above.

During the pendency of this appeal, appellant Ved Parkash moved an application (Criminal Misc.No.41591 of 2013) claiming thereby juvenality. For this purpose, a report was called from the Principal Magistrate, Juvenile Justice Board, who has reported that Ved Parkash appellant was below 18 years of age on the day of occurrence. Thus, he has been declared juvenile.

We have heard learned counsel for the parties and have gone through the record.

On behalf of appellant Meena, it has been vehemently contended that nothing has been recovered from her; no role has been

attributed to her in the crime; that there is no incriminating evidence against her and that she has been falsely implicated in this case; and that the trial Court failed to appreciate evidence properly and, thus, wrongly recorded the judgment of conviction. It has also been argued that Ved Parkash has been found to be a juvenile, therefore, conviction and sentence is illegal.

On the other hand, learned State counsel has strenuously contended that both the appellants were arrested together and Smt. Meena also suffered disclosure statement Ex.PV and thereby confessed to the crime. According to him, the prosecution has proved the charge beyond shadow of reasonable doubt.

We have given thoughtful consideration on the rival contentions and critically examined the evidence on record.

First of all, coming to the evidence against Ved Parkash, prosecution has proved the following circumstances against him:-

- (i) That he was in the exclusive possession of the room from where dead body was recovered as the said room was taken on rent by him;
- (ii) That the room was locked by him and key was in his exclusive possession;
- (iii) That he opened the lock and got recovered the dead body vide memo Ex.PW.

The clothes worn by appellant Ved Parkash were taken into police possession. Those were sent to forensic science laboratory for chemical examination. As per FSL report, his black trouser and full sleeve shirt were stained with human blood of group 'AB'. Similar blood group

also on the white shirt worn by deceased himself. It is well proved that the said blood group 'AB' belonged to deceased. Appellant Ved Parkash failed to explain under what circumstances his clothes were stained with human blood of group 'AB'. Blood of similar group was also detected on the knife recovered from him. On analysis of the evidence, this Court is satisfied that there is ample evidence that appellant Ved Parkash had committed the murder.

Since appellant Ved Parkash has been declared juvenile being below 18 years of age on the day of the occurrence. However, the occurrence had taken place seven years earlier and now he might be above 24 years of age. Under the provisions of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act'), he can be sent to special home maximum for a period of three years. Section 15 of the Act reads as under:-

“15. Order that may be passed regarding juvenile –(1) Where a Board 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 Board may, if it so thinks fit, --

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) Order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) 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 the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) 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;

(g) make an order directing the juvenile to be sent to a special home for a period of three years.”

Since he remained in custody from the day of his arrest till he was released on bail. Thus, he remained in jail for more than three years. It shall not be in the interest of justice that the case be remanded back to the Juvenile Justice Board. Similar matter has already been discussed by Hon'ble Supreme Court in case **Vijay Singh versus State of Delhi 2012 (4) RCR (Criminal) 532**. In that case, the appellant was convicted by the trial court and his appeal was also dismissed by the High Court. However, at the time of filing special leave petition, he raised the point of juvenality before Hon'ble Supreme Court and he was found to be juvenile. Hon'ble Supreme Court instead of remitting the case to the Juvenile Justice Board and while upholding his conviction set aside the sentence imposed upon him and direct that he be released forthwith if he is not required in any other case. Hon'ble Supreme Court has observed as under:- 16 to 22

“Having regard to the above conclusion, in the normal course we would have remitted the matter to the Juvenile Justice Court, Itawa for disposal in accordance with law. However, since the offence was alleged to have been committed more than 10 years ago and having regard to the course adopted by this Court in certain other cases reported in

Jayendra & Anr. v. State of Uttar Pradesh, 1981(4) SCC 149, Bhoop Ram v. State of U.P., 1989(1) R.C.R.(Criminal) 573 : 1989(3) SCC 1 which were subsequently followed in Bhola Bhagat v.State of Bihar,1998(1) R.C.R.(Criminal)21: 1997 (8) SCC 720, Pradeep Kumar v. State of U.P., 1995 Suppl. (4) SCC 419, Upendra Kumar v. State of Bihar, 2005(3) SCC 592 and Vaneet Kumar Gupta alias Dharminder v. State of Punjab, 2011(8) R.C.R.(Criminal) 1315 : 2009(17) SCC 587, we are of the view that at this stage when the appellant would have now crossed the age of 30 years, there is no point in remitting the matter back to the Juvenile Justice Court. Instead, following the above referred to decisions, appropriate orders can be passed by this Court itself.

In Jayendra (supra) the challenge arose under Uttar Pradesh Children Act, 1951 which contained Section 27 which mandated that no child shall be sentenced to any term of imprisonment and if a child had been found to have committed an offence punishable with imprisonment then he could be sent to an approved school. However, it had been determined by the Supreme Court through the reports of medical officers taking into account the general appearance, physical examination and radiological findings of the appellant Jayendra, that he had been a 'child' under the definition in the Act at the time of commission of the offence. However, at the time of hearing of the SLP by the Supreme Court, he had already attained the age of 23. In the light of that, the Court upheld the conviction of the appellant Jayendra, but quashed the sentence imposed on him and directed that he be released forthwith. The Court observed as under :-

"3. Section 2(4) of the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1952) defines a child to mean a person under the age of 16 years. Taking into account the various circumstances on the record of the case we are of the opinion that the appellant Jayendra was a child

within the meaning of this provision on the date of the offence. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 2 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.

4. For these reasons, though the conviction of the appellant Jayendra has to be upheld, we quash the sentence imposed upon him and direct that he shall be released forthwith."

18. In Bhoop Ram (supra) also the case arose under the Uttar Pradesh Children Act, 1951. The controversy there was surrounding the question whether the appellant had actually been a juvenile/child under the definition of the Act at the time of commission of the offence. Although such a plea had been taken before both the trial Court as also the Sessions Court, the trial Court had merely taken into account such a plea for the purpose of awarding a reduced sentence of life imprisonment instead of death penalty for the offences he had been charged with and convicted for. When the appeal reached the Supreme Court, this Court directed an enquiry by the Sessions Judge to determine if the appellant had been actually been a child at the time of the incident. The Sessions Judge conducted an enquiry, taking into account the opinion of the Chief Medical Officer and the school certificate that had been produced by the appellant, and concluded that the

appellant had not been a 'child' at the concerned time. However, the Supreme Court rejected the finding of the Sessions Judge being based on surmises and essentially relying upon the school certificate produced by the appellant to conclude that he indeed had been a 'child' at the time when the offence had been committed. On the question of sentencing, this Court followed the precedent in Jayendra (supra) and quashed the sentence, observing :-

*"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.** 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 insofar as the sentence imposed upon the appellant are quashed."*

19. In Bhola Bhagat (supra) this Court had discussed the present issue at hand at quite some length. Three of the appellants had taken the plea of juvenility in assailing the order of the High Court sentencing them to imprisonment for life for offences under Section 302/149, Indian Penal Code. The Supreme Court agreed with the findings of the lower Courts as regards the involvement of the appellants in the

commission of the offence and held that the same had been established beyond reasonable doubt. However, on the question of sentencing, the Court looked into the plea of juvenility as had been claimed by the appellants. The Court had noted the interplay of the two Acts in question viz. The Bihar Children Act, 1982 and the Juvenile Justice Act, 1986 and that the Bihar Act had already been in force at the time of the commission of the offence. It took note of the decisions of this Court in Bhoop Ram (supra) and Jayendra (supra) and emphasised that in these cases although the conviction was sustained the sentence had been quashed taking into account the fact that the appellants had crossed the age of juvenility and could not be sent to an 'approved school' as had been contemplated under the relevant Children's Act. The Court proceeded to discuss the three Judge Bench decision of this Court in Pradeep Kumar (supra) and quoted the following from that case :-

"12.....

"At the time of the occurrence Pradeep Kumar appellant, aged about 15 years, was resident of Railway Colony, Naini, Krishan Kant and Jagdish appellants, aged about 15 years and 14 years, respectively, were residents of Village Chaka, P.S. Naini."

At the time of granting special leave, two appellants therein produced school-leaving certificate and horoscope respectively showing their ages as 15 years and 13 years at the time of the commission of the offence and so far as the third appellant is concerned, this Court asked for his medical examination and on the basis thereof concluded that he was also a child at the relevant time. The Court then held: (SCC p. 420, paras 3 and 4)

"It is, thus, proved to the satisfaction of the Court that on the date of occurrence, the appellants had not

completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Sections 302/34 of the Act.

Since the appellants are now aged more than 30 years, there is no question of sending them to an approved school under the U.P. Children Act for detention. Accordingly, while sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith. The appeals are partly allowed in the above terms."

(Emphasis supplied)

20. The Court in its final conclusion in Bhola Bhagat (supra), adopted the same course as had been done in the aforementioned cases and observed :-

"15. The correctness of the estimate of age as given by the trial court was neither doubted nor questioned by the State either in the High Court or in this Court. The parties have, therefore, accepted the correctness of the estimate of age of the three appellants as given by the trial court. Therefore, these three appellants should not be denied the benefit of the provisions of a socially progressive statute. In our considered opinion, since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely fell within the definition of the expression "child". We are under these circumstances reluctant to ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other supporting material to support the estimate of ages of the

appellants as given by the trial court, though the correctness of that estimate has not been put in issue before any forum. Following the course adopted in Gopinath Ghosh, Bhoop Ram and Pradeep Kumar cases while sustaining the conviction of the appellants under all the charges we quash the sentences awarded to them.

16. The appellants Chandra Sen Prasad, Mansen Prasad and Bhola Bhagat, shall, therefore, be released from custody forthwith, if not required in any other case. Their appeals succeed to the extent indicated above and are partly allowed."

21. In Upendra Kumar (supra), this Court reiterated the position that has been adopted in the aforementioned cases. The appellant had been handed down a life imprisonment for his conviction under Section 302 of the Indian Penal Code. He had been a juvenile, as under the Juvenile Justice (Care & Protection of Children) Act, 2000, on the day of the commission of the offence but, however, the protection of the Act had not been afforded to him. Through the report of the Medical Board, it had been fully established that the appellant was between the age of 17 and 18 years on the date of the report which was dated some three months after the day of incident in question. Even the order of sentence recorded the age of the appellant as 17 years. The Court thus concluded that the appellant was liable to be granted the protection of the Juvenile Justice Act, 2000. As regards the course to be adopted as a sequel to such conclusion, this Court referred to the earlier decisions such as in the case of Bhola Bhagat (supra), Bhoop Ram (supra) etc. The Court observed in this regard:-

*"4. Mr Sharan has cited various decisions but reference may be made only to the case of **Bhola Bhagat v. State of Bihar** since earlier decisions on the issue in question have been noticed therein. In Bhola Bhagat case*

*referring to the decisions in the case of **Gopinath Ghosh v. State of W.B., Bhoop Ram v. State of U.P. and Pradeep Kumar v. State of U.P.** this Court came to the conclusion that the accused who were juvenile could not be denied the benefit of the provisions of the Act then in force, namely, the Juvenile Justice Act, 1986.*

5. The course this Court adopted in Gopinath Ghosh case as also in Bhola Bhagat case was to sustain the conviction but, at the same time, quash the sentence awarded to the convict. In the present case, at this distant time, the question of referring the appellant to the Juvenile Board does not arise. Following the aforesaid decisions, we would sustain the conviction of the appellant for the offences for which he has been found guilty by the Court of Session, as affirmed by the High Court, at the same time, however, the sentence awarded to the appellant is quashed and the appeal is allowed to this extent. Resultantly, the appellant is directed to be released forthwith if not required in any other case."

22. Similar course of action was taken in a recent decision of this Court in Vaneet Kumar Gupta alias Dharminder (supra). Challenge in that appeal was mainly on the award of sentence of life imprisonment to the appellant and to determine whether adequate material had been available on record to hold that the appellant had not attained the age of 18 years on the date of commission of the offence. Upon an affidavit filed by the Deputy Superintendent of Police pursuant to inquiries made by him, it was reported that the age of the appellant as on the date of occurrence had been about 15 years. The inquiry report inspired confidence of the Court and the Court held that the appellant cannot be denied the benefits of the Juvenile Justice (Care & Protection of Children) Act, 2000. As regards the question of sentence, this Court observed:-

"12. The inquiry report, which inspires confidence, unquestionably establishes that as on the date of occurrence, the appellant was below the age of eighteen years; was thus, a "juvenile" in terms of the Juvenile Justice Act and cannot be denied the benefit of the provisions of the said Act. Therefore, having been found to have committed the aforementioned offence, for the purpose of sentencing, he has to be dealt with in accordance with the provisions contained in Section 15 thereof. As per clause (g) of sub-section (1) of Section 15 of the Juvenile Justice Act, the maximum period for which the appellant could be sent to a special home is a period of three years.

13. Under the given circumstances, the question is what relief should be granted to the appellant at this juncture. Indisputably, the appellant has been in prison for the last many years and, therefore, at this distant time, it will neither be desirable nor proper to refer him to the Juvenile Justice Board. Accordingly, we follow the course adopted in **Bhola Bhagat v. State of Bihar**; sustain the conviction of the appellant for the offence for which he has been found guilty by the Sessions Court, as affirmed by the High Court and at the same time quash the sentence awarded to him.

14. Resultantly, the appeal is partly allowed to the extent indicated above. We direct that the appellant shall be released forthwith, if not required in any other case."

Keeping in view the peculiar circumstances of the case and by following the *ratio decidendi* in Vijay Singh's case (supra), this Court is of the considered opinion that the ends of justice would be adequately met, in case the period already undergone by the appellant be treated as

spent in special home under the provisions of Section 15 (g) of the Act. Thus, by upholding his conviction of the appellant, the sentence imposed by learned trial court stands set aside.

Now coming to the case of Smt. Meena, although the prosecution has relied upon her disclosure statement Ex.PV yet the same is of no avail as nothing has been recovered in pursuance thereof. The dead body was got recovered by appellant Ved Parkash from the room which is in his exclusive possession.

Learned State counsel has vehemently contended that both the appellants were arrested together but to the mind of this Court, this fact *ipso facto* is not sufficient to uphold her conviction. There may be some intimacy between them but the same itself is not incriminating circumstance, especially when they were not arrested from the place of occurrence.

Another circumstance brought against Smt. Meena is that her *saari* was stained with blood but blood group thereon could not be detected. When she was arrested, her *saari* was not taken into possession, rather the same was taken into possession by the doctor, before whom she was produced for medical examination after her arrest. The medical report of appellant Meena transpires that her black saari, black coloured blouse, white coloured bra and her underwear were taken into possession by the doctor and those were handed over to the investigating agency. The said clothes were sent to Chemical Examiner. As per report, the said clothes of Smt. Meena were stained with human blood.

In the absence of detection of the blood group, it cannot be

taken as an incriminating circumstances against her especially when it was not disclosed at which place of the saari said blood was affixed. Apart from it, her presence at the place of occurrence is not proved and no role has been attributed to her with regard to commission of the crime. In these circumstances, the mere fact that her saari was stained with blood, ipso facto, cannot be taken as an incriminating circumstance against her. To the mind of this Court, she is entitled to the benefit of doubt.

Consequently, this appeal qua appellant Ved Parkash is hereby dismissed and judgment of conviction stands upheld subject to abovesaid modification with regard to the sentence. His sentence as awarded by the learned trial court stands set aside as he has already undergone the maximum period as required under Section 15 (g) of the Act. He is on bail. His bail bonds stand discharged.

However, this appeal qua Smt. Meena stands accepted and she is given benefit of doubt. Resultantly, she is acquitted of the charge(s) framed against her. She is stated to be on bail and her bail bonds stand discharged.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

06.12.2017
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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No