

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1774 of 2000

Judgment Reserved on : 8.1.2020

Judgment Delivered on : 19.5.2020

Maha Singh, son of Jethuram Gond, aged about 21 years, resident of Ghunghutti Para, Police Station Ratanpur, District Bilaspur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Police Station Ratanpur, District Bilaspur

--- Respondent

For Appellant : Shri Rajesh Jain, Advocate
For Respondent : Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 9.3.2000 passed by the 5th Additional Sessions Judge, Bilaspur in Sessions Trial No.379 of 1999, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. According to the case of the prosecution, date of birth of the prosecutrix (PW12) is 25.5.1985. On 20.7.1999, brother of the prosecutrix, namely, Mohanlal (PW9) made a missing report of the prosecutrix stating therein that the Appellant, inducing the prosecutrix, has taken her away with him. During inquiry, on

23.8.1999, the prosecutrix was recovered from the possession of the Appellant. Her statement was recorded. She disclosed the fact that due to love relationship, on the pretext of marriage, the Appellant took her away and also committed sexual intercourse with her. Offence was registered. Statements of the prosecutrix and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him.

3. On completion of the trial, the Trial Court, vide the impugned judgment, convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. During pendency of this appeal, an application under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (henceforth 'the Act of 2015') was preferred on behalf of the Appellant for determination of his age. On the basis of the application, 5th Additional Sessions Judge, Bilaspur was directed to make an inquiry into the date of birth of the Appellant and his age on the date of the offence. The inquiry officer has reported that on the date of offence, i.e., on 20.7.1999, age of the Appellant was 17 years 2 months and 5 days.
5. Learned Counsel appearing for the Appellant, on the basis of the above-mentioned report of the inquiry officer and relying on the judgments in (2009) 13 SCC 211 (Hari Ram v. State of Rajasthan), (2010) 5 SCC 344 (Dharambir v. State (NCT of Delhi), (2013) 11 SCC 274 (Bharat Bhushan v. State of Himachal Pradesh) and (2018) 15 SCC 277 (Ashok Kumar v. State of Uttar Pradesh),

submitted that as on the date of commission of the alleged offence, the Appellant had not attained the age of 18 years, he should be treated as a “juvenile” as defined under Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (henceforth ‘the Act of 2000’) or a “child in conflict with law” as defined under Section 2(13) of the Act of 2015. It was further submitted that by virtue of the explanation to Section 20 of the Act of 2000, the Appellant is entitled for benefit of juvenility.

6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In this case, date of the offence is 20.7.1999. On the basis of the entries of the aadhar card and dakhil-kharij register, 5th Additional Sessions Judge, Bilaspur opined that on the date of offence, age of the Appellant was 17 years 2 months and 5 days. There is nothing on record on the basis of which any contradictory view could be taken. Therefore, it is found that on the date of offence, age of the Appellant was below 18 years. Therefore, as per the definitions given in Section 2(k) of the Act of 2000 and Section 2(13) of the Act of 2015, on the date of offence, the Appellant was a juvenile or a child in conflict with law.
9. While dealing with the issue in **Bharat Bhushan case (supra)**, it has been observed by the Supreme Court as under:

“8. The legal position regarding the entitlement of the appellant who was more than 16 years but less than 18 years of age as on the date of commission of the offence on 22.6.1993, is

in our view settled by the decision of this Court in *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211. This Court has in that case traced the history of the legislation and reviewed the entire case law on the subject. Relying upon the decision of the Constitution Bench of this Court in *Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551, this Court in *Hari Ram case* reiterated that the question of juvenility of a person in conflict with law has to be determined by reference to the date of the incident and not the date on which cognizance is taken by the Magistrate. Having said that, this Court held that the effect of the pronouncement in *Pratap Singh case* on the second question viz. whether the 2000 Act was applicable in a case where the proceedings were initiated under the 1986 Act and were pending when the 2000 Act came into force, stood neutralised by the amendments in the Juvenile Justice (Care and Protection of Children) Act, 2000, by Act 33 of 2006. The amendments made the provisions of the Act applicable even to juveniles who had not completed the age of 18 years on the date of the commission of offence said this Court. Speaking for the Court Altamas Kabir, J. (as His Lordship then was) observed: (*Hari Ram case*, SCC pp. 226-28, paras 58-59 & 68)

“58. Of the two main questions decided in *Pratap Singh case*, one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystalised 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.

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68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the

operation of the 1986 Act.”

It has been further observed in paragraphs 11 and 12 as under:

“11. The question then is whether the High Court could have at all recorded a conviction against the appellant who as seen above was a juvenile on the date of the commission of the offence. The answer to that question, in our opinion, lies in Section 20 of the 2000 Act which reads as under:

“20. *Special provision in respect of pending cases.*—Notwithstanding anything contained in this Act, all proceedings in respect of a 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:

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”.

12. The above makes it manifest that proceedings pending against a juvenile in any court as on the date the 2000 Act came into force had to continue as if the 2000 Act had not been enacted. More importantly Section 20 obliges the court concerned to record a finding whether the juvenile has committed any offence. If the court finds the juvenile guilty, it is required under the above provision to forward the juvenile to the Board which would then pass an order in accordance with the provisions of the Act as if it had been satisfied on enquiry under the Act that the juvenile had committed an

offence.”

10. Again, in **Ashok Kumar case (supra)**, relying on **Hari Ram case (supra)**, it has been further observed by the Supreme Court thus:

“8. In view of the contentions of both the learned Senior Counsel for the parties and foregoing reasons, we have to hold that the appellant is entitled for the benefit of the juvenility. In view of the aforesaid pronouncement of law made by this Court in *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211 of which relevant portion is extracted above, we are required to set aside the impugned judgment of conviction and sentence as we do so.”

11. In view of the contentions of Learned Counsel appearing for the parties and for the foregoing reasons, I hold that the Appellant is entitled to get benefit of juvenility. Accordingly, I allow the instant appeal and remit the matter to the Juvenile Justice Board, District Bilaspur to exercise its power under Sections 15 and 18 of the Act of 2015 for conducting an inquiry and dispose of the matter within a period of 6 weeks from the date of receipt of this judgment. While disposing of the matter, the Board shall take into consideration the age of the Appellant and the facts that he has already undergone sentence of about 1½ years, he and the prosecutrix have performed marriage with each other and out of their wedlock they have 3 children. The Board shall exercise its power within the stipulated period and shall pass an appropriate order after conducting an inquiry as mentioned above.
12. Record of the Court below (5th Additional Sessions Judge, Bilaspur) be sent to the Juvenile Justice Board, District Bilaspur along with a copy of this judgment forthwith for information and necessary compliance. After disposal of the matter, the Board

shall send a copy of its order to this Court and to the Court of 5th Additional Sessions Judge, Bilaspur. After the disposal, the Board shall also send back the record to the Court of 5th Additional Sessions Judge, Bilaspur.

Sd/-

(Arvind Singh Chandel)
JUDGE