

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2095 of 1998**

- Sunil Kumar, Son of Rampyare @ Rampyari, aged 19 years, (Correct age 17 years and 7 months), R/o Bhatgaon, P.S. Pratapur, District Surguja, M.P. (Now CG)

----Appellant

Versus

- The State of M.P. (Now C.G.)

---- Respondent

For Appellant	Shri A.K. Prasad, Advocate.
For Respondent/State	Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

30/01/2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.07.1998 passed by the Additional Sessions Judge, Surajpur, District Surguja, C.G. in Sessions Trial No. 224/96, whereby, the appellant stands convicted and sentenced for abduction of the minor prosecutrix from her lawful guardianship and subjecting her to forcible sexual intercourse, as under:-

Conviction	Sentence
Under Section 376 (1) of IPC	R.I. for five years and fine of Rs.1,000/-, in default of payment of fine additional R.I. for three months
Under Section 366 of IPC	R.I. for three years
Under Section 363 of IPC	R.I. for two years

2. During pendency of this appeal, learned counsel for the appellant filed an application I.A. No.01/17 claiming juvenility of the appellant on the date of incident. This Court vide order dated 24.04.2018 directed the 1st Additional Sessions Judge, Surajpur to conduct an inquiry into juvenility/age of the appellant and submit his report within a period of two months. In compliance thereof, 1st Additional Sessions Judge, Surajpur has submitted a report dated 18.09.2019 in MJC No.16/19 in which it has been mentioned that the appellant was below 18 years of age on the date of incident.

3. Heard on the report submitted by 1st Additional Sessions Judge, Surajpur after conducting inquiry into juvenility of the appellant.

4. Counsel for the State has no objection to the report submitted by the 1st Additional Sessions Judge, Surajpur.

5. In the matter of ***Hari Ram vs. State of Rajasthan and another*** reported in **(2009) 13 SCC 211**, referring to various earlier judgments of the Supreme Court including the one rendered in ***Pratap Singh vs. State of Jharkhand and another*** reported in **(2005) 3 SCC 551**, the Hon'ble Supreme Court held as under:-

“ The problem which frequently arises after the enactment of the Juvenile Justice Act, 2000, is regarding the application of the definition of “juvenile” as given under Sections 2(k) and (l) for offences committed prior to 1.4.2001 when the Juvenile Justice Act, 2000 came into force.

As per Sections 2(k), 2(l), 7-A of the 2000 Act and Rule 12 of the 2007 Rules read with Section 20 of the Juvenile Justice Act, 2000 as amended in 2006, a juvenile who had not completed

eighteen years on the date of commission of the offence is 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. The said position has been re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act whereby the proviso and Explanation were added to Section 20, which make it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of Section 2(l) of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in the present case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed there under, even if the juvenile had ceased to be so on or before the date of commencement of the Act. The law as now crystallised 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 offence even prior to 1.4.2001, would be treated as juveniles even if the claim of the 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. Since the appellant was below 18 years of age at the time of commission of the offence the provisions of the said Act would apply in his case in full force and on the date of the incident it has to be held that he was juvenile.”

6. In the matter of ***Mohd. Feroz Khan @ Feroz vs. State of Andhra Pradesh*** reported in **(2015) 16 SCC 186**, the Hon'ble Supreme Court held as under:-

“Petitioner serving sentence in District Jail under Ss. 120-B, 302 and 396 IPC- Conviction and sentence confirmed up to Supreme Court – Petitioner pointed out that since on the date of commission of offence (2-8-1999), he was a minor i.e. 17 years, 3 months and 13 days of age (below 18 years), hence he was entitled to get the benefit of relief granted to accused in *Hari Ram*, (2009) 13 SCC 211 – Since the issue of juvenility of petitioner was not decided in accordance with law laid down by the Supreme Court, by competent authority at any stage in any court proceedings, hence he has a right to raise such plea at any time and in any proceedings in any court for determination of this question notwithstanding the fact that he has suffered conviction from regular courts – Held, facts of the case in hand and the one involved in *Hari Ram* case are more or less similar – Petition allowed – Juvenile Justice (Care and Protection of Children) Rules, 2007, Rr. 12 & 98.”

7. The documents submitted by the appellant to establish his juvenility were also produced before the trial Court when he entered his defence. From the record of the trial Court, it is seen that the appellant from the date when he was given the opportunity of his defence, submitted all the documents before the Inquiry Officer and that documents were also submitted before the trial Court but due to non-availability of witnesses opportunity of examining of defence witness was closed on 16.07.98 (wrongly mentioned in the order sheet as 16.05.98). But in this case from the beginning when he entered his defence, all the documents i.e. mark sheets of Class- I, II and III were submitted before the trial Court and on the basis of that documents inquiry was made by the 1st Additional Sessions Judge, Surajpur and he submitted report regarding the age of the appellant. Therefore, considering the inquiry report submitted by 1st Additional Sessions Judge, Surajpur that on the date of incident,

appellant was below the age of 18 years, there is no reason to disbelieve the inquiry report submitted by the 1st Additional Sessions Judge, Surajpur and that report is also not challenged by the State regarding the finding given by the 1st Additional Sessions Judge, Surajpur.

8. Thus, considering the report submitted by the 1st Additional Sessions Judge, Surajpur, the law laid down by the Hon'ble Supreme Court in the matters of ***Hari Ram & Mohd. Feroz Khan @ Feroz*** (supra), Section 7A of the Juvenile Justice Act, 2000 and Rule 12 of Juvenile Justice Care and Protection of Children Rules, 2007 which gives retrospective effect to the Juvenile Justice Act, 2000 as also Juvenile Justice (Care and Protection of Children) Act, 2015, since the appellant was juvenile on the date of incident, the impugned judgment delivered by the trial Court is held to be without jurisdiction and is hereby set aside.

9. In the result, the appeal is allowed in part. The impugned judgment of the trial Court is set aside. The matter is remitted back to the Juvenile Justice Board, Surajpur for deciding the same within six months from the date of receipt of copy of this order. The parties are directed to appear on **2nd March, 2020**.

10. Registry is directed to send the record to Juvenile Justice Board, Surajpur.

Sd/-
Gautam Chourdiya
Judge