

**In the High Court of Punjab and Haryana at Chandigarh****CRA-D-937-DB-2002 (O&M)****Reserved on: 31.7.2024****Date of Decision: 13.8.2024**

Gaurav Kumar alias Monu

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Rishi Malhotra, Advocate,
Mr. Nikhil Ghai, Advocate and
Ms. Rishika, Advocate
for the appellant.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 12.11.2002, upon Criminal Case No. 127 S.C., by the learned Additional Sessions Judge (Adhoc), Hisar, wherethrough in respect of charges drawn against the present convict-appellant and one Hans Raj (since deceased) qua offences punishable under Sections 302 read with Section 34 of the IPC, the learned trial Judge concerned, proceeded to record a finding of conviction against the convict-appellant. However, the co-accused namely Raghubir was acquitted of the charges framed against him.

2. Moreover, through a separate sentencing order drawn on 14.11.2002, the learned trial Judge concerned, sentenced both the convicts to undergo life imprisonment for an offence punishable under Section 302 read with Section 34 of the IPC, besides also imposed, upon both the convicts sentence of fine, comprised in a sum of Rs. 500/- each, and, in default of payment of fine amount, he sentenced both the convicts to



undergo rigorous imprisonment for a period of six months.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P6 is assigned. As per the prosecution case, on 24.5.2000, an information was received from the Government Hospital, Hansi about the admission of Sher Singh son of Narayan Dass having admitted in the hospital with multiple injuries on his person. Sudhinder Singh H.C. went there and moved an application at about 4.15 A.M. to obtain the opinion of the doctor about the condition of Sher Singh. The doctor declared him unfit for statement. The Head Constable again went to the hospital and obtained the opinion of the doctor at 11.00 A.M. and this time, the injured was declared fit to make the statement. Subsequently, his statement was recorded, which was read over to him upon which Sher Singh signed the same. The endorsement was made on this statement and it was sent to the police station for registration of the case. The statement of Sher Singh is ad verbatim extracted hereinafter:-

“I am Sher Singh S/o Narayan Dass, caste Arora, R/o Boga Ram Colony, Hansi. I serve in the Subji Mandi, Hansi and my son Rajesh is running dairy in Gajipur, Delhi. About seven or eight months ago, Hans Raj Charaya Dairy Wala, Boga Colony, Hansi had taken some buffalos to Delhi and sold these buffalos through my son. To recover the money in respect of this sale, Hans Raj had gone once to Delhi and had quarreled with my son in this connection. He did not go again to Delhi for the recovery of money. He was demanding money and was saying that the amount should be paid otherwise he would kill us. Last night, at about 11.00 or 12.00, Hans Raj Charaya Dairy Wala and Manu along with three other persons, whose names I do not know but whom I can identify if they come



before me and they were having dandas with them. There were some pipes in the vehicle also. One of them was having the uniform of a home-guard and the name of Krishan was there on the name plate. All these five person told me to settle the account and to accompany them to the police station. I went with them in the jeep which was being driven by Manu. The jeep was first taken in a closed factory near Pir Baba on Hisar Road. Manu opened the lock of the factory and there all of them gave me kicks with feet, fists and blows with dandas and pipes. All the five persons gave me blows on my chest and they were telling that I was being taught the lesson for not paying the money. They said that they knew how to recover the amount from me. Then all the five persons made me sit in the jeep and left me at my house. My wife Raj Rani and my son Rajesh also saw these five persons. Our tenant Uma Shanker (from Bihar) also saw these five persons. They, while leaving, said that they had spared me on that day and if the payment is not made, I would be killed, and if the report was made in the police station, then it would be bad for me. My wife and my son got, me admitted in the hospital at Hansi. I had told whole of the occurrence to my son and my wife. Krishan had taken my watch also and statement has been recorded. Hans Raj etc. five persons have caused me injuries without any reason. Action be taken. My statement has been recorded. It is correct."

On the basis of the said statement, formal FIR was registered.

Investigation proceedings

4. During the course of investigations, on 25.5.2000, supplementary statement of Sher Singh was recorded U/S 161 Cr.P.C. Later on Sher Singh died. Post mortem examination was done. The inquest proceedings were completed. Hans Raj was arrested and he made the disclosure statement that he alongwith Monu, Harish, Raghubir and Durga went in a Jeep and Sher Singh was taken and giving beating with Dandas



etc. The disclosure statement of Hans Raj was recorded. He got the dandas recovered. He also pointed out the place of occurrence and the memo of pointing out of the place of occurrence was prepared and blood was lifted from the spot. Gaurav was arrested on 5.6.2000. He made the disclosure statement about the concealment of pipes etc. His statement was recorded and he also got the iron rod recovered. The sketch was prepared and it was taken into possession through recovery memo. Similarly accused Raghubir made the disclosure statement about the concealment of danda and the uniform, and, in pursuance thereof, he got recovered the danda and uniform. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

5. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 19.9.2000, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused for the offences punishable under Sections 148, 302 read with Section 149 IPC and under Sections 170 and 171 IPC. The afore drawn charges were put to the accused-appellant, to which he pleaded not guilty, and, claimed trial.



7. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

8. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused-appellant pleaded innocence, and, claimed false implication. The accused did not lead any witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the present accused-appellant and one Hans Raj (since deceased) for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the both the accused.

Submissions of the learned senior counsel for the appellant

10. The learned senior counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He further rests the above submissions on the ground, that in the instant case the identity of the appellant is disputed, as the prosecution has established his identity on the basis of a disclosure statement made by co-accused Hans Raj, which, however, is inadmissible in evidence, especially when he has not specifically named the appellant but had only named Monu. The learned senior counsel has further argued that the statement of deceased



Sher Singh (Ex.P-5) is not admissible in evidence, the same being not a valid dying declaration. He has rested the above submission on the ground, that the medical officer concerned, had admitted that he neither conducted the medical check-up of the deceased nor investigated whether the deceased was fit to make the statement. Moreover, the said dying declaration has neither been signed by the medical officer concerned, nor the same was got recorded by the Magistrate concerned. In addition, the said alleged dying declaration does not carry the signature of any witness, despite Raj Rani, and Rajesh who are respectively the wife and the son of the deceased, being present in the hospital. He has further argued, that the prosecution has failed to establish the requisite *mens rea* on the part of the appellant, besides has also failed to prove the motive behind the alleged occurrence on the part of the appellant.

11. The learned senior counsel for the appellant further submits, that the trial, as became entered into against the said juvenile, rather was a jurisdictionally incompetent trial. He has further argued, that the verdict of conviction, and, consequent thereto imposed sentence(s) of imprisonment (*supra*), upon the convict-appellant, thus require theirs being quashed, and, set aside. Consequently, he contends that after quashing of the impugned verdict of conviction, and, the consequent thereto sentences as became imposed upon appellant Gaurav Kumar, a direction be passed by this Court to the Juvenile Justice Board concerned, (hereinafter referred to as the “JJB”) to enter upon a *de novo* trial in respect of the offences embodied in FIR (*supra*).



Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

Reasons for partly allowing the instant appeal

13. For the reasons to be assigned hereinafter, the instant appeal is hereby partly allowed. Consequently, the verdict of conviction, as made by the learned trial Court, upon the convict-appellant, is maintained and affirmed. However, the sentence(s) as imposed, upon the appellant by the learned trial Court concerned, rather in terms mentioned hereinafter, is quashed and set aside qua the appellant.

14. Before proceeding to adjudicate the instant appeal, it is imperative to decide the issue as raised by the appellant qua his being a juvenile at the time of commission of the crime event.

15. This Court vide order made on 24.3.2003, while issuing notice on the bail application, had also called for a report from the learned Sessions Judge concerned, qua whether the appellant was a juvenile at the time of commission of offence and also on the date of framing of charge. In compliance of the said order, the learned Sessions Judge concerned, conducted an inquiry, and, after considering the materials received in the inquiry, including the oral evidence of the father of the appellant, thus submitted a report dated 8/9.5.2003, to this Court, wherein, it was held that the date of birth of the appellant is 17.8.1981, hence on the intervening night



of 23/24.5.2000, thus the appellant Gaurav Kumar was more than 18 years of age

16. Subsequently, during the pendency of the present appeal, the petitioner had filed CRM No. 20593 of 2014 before this Court, thus for placing on record certain documents as additional evidence and for taking the plea that therebys he was a juvenile on the date of occurrence i.e. 24.5.2000. However, vide order dated 30.1.2015 passed by this Court, order whereof is extracted hereinafter, the said application became dismissed as withdrawn.

“CRM No.20593 of 2014

The criminal miscellaneous application has been filed by the applicant-appellant Gaurav Kumar @ Monu for placing on record the secondary certificate of National Open School, Government of India, New Delhi dated 23.5.2000, matriculation certificate of National Open School, Government of India dated 1.8.1999 and identity card of the applicant-appellant Gaurav Kumar @ Monu issued by the National Open School as Annexures A-1, A-2 and A-3 respectively as additional evidence and for taking the plea of the applicant-appellant being juvenile on the date of incident i.e. 24.5.2000.

The applicant-appellant had earlier filed CRM-11667 of 2003 seeking suspension of sentence of imprisonment of the applicant-appellant in which a plea was raised that the applicant-petitioner was less than 18 years of age on the date of incident i.e. 24.5.2000. This Court vide order dated 24.3.2003 while issuing notice on the application for bail ordered that in the meanwhile a report of the learned Sessions Judge, Hissar be called as to whether Gaurav Kumar applicant was a juvenile on the date of commission of offence and on the date of framing of charge. A report dated 8/9.5.2003 from the learned Sessions Judge, Hissar has been received in which it has been held that Gaurav Kumar applicant was more than 18 years of age on the date of commission of offence as well as on the date when the charge was framed. In the consideration, the applicantappellant produced on record



certificate Ex.P1 of St. Kabir School, Hissar and also stated that he passed his Secondary Examination from National Open School, New Delhi and placed on record the marks-sheet Ex.P2. The State tendered in evidence the birth certificate Ex.R1 issued by the Registrar, Death and Birth, Hansi wherein the date of birth of son of Devender and Indu is recorded as 17.8.1981. The learned Sessions Judge, Hissar observed that learned counsel appearing on behalf of the applicant-appellant Gaurav Kumar was unable to convince the Court as regards the fact that when Gaurav Kumar is the eldest son of Devender and Indu, then the said entry in the birth certificate Ex.R1 that a son has been born on 17.8.1981 relates to whom. In cross-examination it was submitted by Devender AWI who is the father of Gaurav Kumar that the name of his wife is Indu and Garuav was their eldest son.

In view of the report of learned Sessions Judge, the learned counsel for the applicant-appellant submits that he does not press the present application.

Accordingly, the criminal miscellaneous application is dismissed as withdrawn.”

17. The appellant challenged the said order before the Hon’ble Supreme Court by filing Criminal Appeal No. 283-285 of 2019. The Hon’ble Supreme Court vide judgment dated 15.2.2019, set aside the order (supra) of this Court, and, made a direction upon this Court to consider the question of juvenile afresh before proceeding to decide the appeal. The Apex Court while deciding the said appeal in the relevant paragraphs, has observed as under:-

“15. The submissions raised by learned counsel for appellant based on Rule 12(3) of 2007 Rules could have been considered by us in detail but we notice that in the present case, there is no applicability of Rule 12 of 2007 Rules. The date of occurrence in the present case is 23/24.05.2000 on which date Rule 2007 were not enforced. Even on the date when learned District and Sessions Judge submitted his report 08.05.2003 after holding inquiry, Rule 2007 was not in force. Rule 100 of 2007 Rules repealed the earlier Rule of Juvenile Justice



(Care and Protection of Children) Rules, 2001. Rule 100 of 2007 Rules is as follows: -

"100. Repeal. - The Juvenile Justice (Care and Protection of Children) Rules, 2001, notified vide F.No.1-3/2001-SD, dated the 22nd June, 2001 in the Gazette of India, Extraordinary, Part I, Section 1 of the same date is hereby repealed."

16. Thus, the relevant Rule occupying the field in the present case were 2001 Rules. Rule 22 of 2001 Rules dealt with "procedure to followed by a board in the holding inquiry in the determination of age." Rule 22 sub-sub-Rule (5) which is relevant for the present case is as follows: -

"22(5). In every case concerning a juvenile or a child, the Board shall either obtain, -

(i) a birth certificate given by a corporation or a municipal authority;

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificates, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board,

regarding his age; and, when passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age."

17. We are of the view that the relevant Rules which were required to be looked into are the Juvenile Justice (Care and Protection of Children) Rules, 2001.

18. The High Court had no occasion to consider the issue since the appellant has not pressed the issue before the High Court, we are of the view that it shall be appropriate that the High Court be requested to consider the question of juvenility of the appellant afresh before proceeding to decide the appeal.

19. The interest of justice be served by setting aside the order dated 30.01.2015 passed by the Punjab and Haryana High Court and remit the question of juvenility to the High Court for consideration. The High Court before deciding the appeal on merit may consider the question of juvenility on the basis of the relevant materials on



record. The documents which were sought to be submitted before the High Court by the appellant be also taken on record and the High Court may reconsider the issue on the basis of materials on record as well as the report of the Sessions Judge which was sought by the High Court. The order dated 30.01.2015 passed by the High Court is set aside. The appeals are disposed of accordingly.”

18. Thereafter, the appellant filed a Review Petition (Crl.) Diary No. 38282 of 2019, challenging the limited portion of the judgment (supra), wherein the Apex Court had ordered to consider the claim of juvenility on the basis of Juvenile Justice (Care and Protection of Children) Rules, 2001 (for short ‘the Rules of 2001’) Rules instead of Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short ‘the Rules of 2007’) Rules. The review petition (supra) was allowed by the Apex Court vide order dated 29.1.2024, and, a direction was made upon this Court to consider the case of juvenility as per Rules of 2007. The relevant paragraphs of the order (supra) are ad verbatim extracted hereinafter.

“Though the learned counsel for the respondent submits that the judgment sought to be reviewed was rightly decided and does not require a review, we are of the view that there occurred a manifest error/apparent and it requires correction. In view of the error which is apparent on the fact of it, the mistake occurred in a judgment has to be corrected for the reason that a party shall not be made to suffer for the mistake or error committed by this Court and for that, in our view, the petitioner cannot be asked to work out remedies elsewhere.

Hence, we review paragraph 17 of the judgment dated 15.02.2019 to the extent vide which this Court required the High Court to look into the provisions of Juvenile Justice (Care and Protection of Children) Rules, 2001. The said requirement, under paragraph 17 of the judgment stands corrected as one requiring to look into the relevant rules under the Juvenile Justice (Care and Protection of Children) Rules, 2007. Ordered accordingly.



19. Consequently, the claim of juvenility of the appellant at the time of commission of offence (supra) is to be determined in terms of Rule 12 of the Rules of 2007. The said rules become extracted hereinafter.

“12. Procedure to be followed in determination of age -

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a playschool) first attended;

and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either(i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause(b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

20. Therefore, in terms of Rule 12, as carried in the Rules of 2007, which are declared by the Apex Court to be the applicable Rules for therebys determining the juvenility of the appellant at the time of commission of



offence, thus, the point for adjudication is whether the Secondary Education Certificate, which is a certificate equivalent to the matriculation certificate, thus pronounces qua at the time of commission of the offence, the appellant was a juvenile.

21. In determining the above, it is necessary to allude to the application bearing No. CRM-30372-2024, whereby the applicant-appellant thus placed on record respectively the affidavit dated 25.7.2015 (Annexure A-1), sworn by Superintendent of Police, District Hisar before the Hon'ble Supreme Court of India, the letter dated 31.3.2015 (Annexure A-2) written by Additional Advocate General of Haryana to Superintendent of Police, Hisar, letter dated 23.4.2015 (Annexure A-3) written by the SHO, District Hisar to the Additional Advocate General, Government of Haryana, Certificate dated 4.8.1998 (Annexure A-4), statements of marks (Annexure A-5), provisional marks statement (Annexure A-6), National Open School Secondary Certificate (Annexure A-7) and Birth Certificate (Annexure A-8).

22. In Annexures A-4 to A-8, the date of birth of the appellant is similar, inasmuch as, the date of birth of the appellant is recorded as 17.8.1982. The above made disclosures are supported by an affidavit sworn by Satender Kumar, Superintendent of Police, District Hisar, as became filed before the Apex Court. The consequent effect of the above placed on record documents, is that, when Rule 12(3)(a) of the Rules of 2007 makes speakings that the age determination parameter in respect of the age of a juvenile in conflict with law, is initially, the matriculation or equivalent thereto certificates, and, only if the said are unavailable, thereupon the subsequent theretos contemplated documents/material are required to be rather fathomed hence for determining the age of the juvenile in conflict



with law. Resultantly when the documents (supra) expressly echo, that the appellant was born on 17.8.1982, and, as such, when at the time of commission of offence, the appellant was a juvenile, thereupon though primarily, he was to be tried by the JJB concerned, than by a regular Court constituted under the Cr.P.C. However, the juvenility of the present appellant at the time of commission of the offence does not yet constrain this Court to declare the apposite trial entered upon the juvenile to be *non est*.

23. The reason for making the above conclusion becomes founded upon paragraphs 18 & 20, as become borne in a verdict rendered by the Hon'ble Apex Court in case titled as “Karan @ Fatiya V. The State of Madhya Pradesh”, to which Criminal Appeal Nos.572-573 of 2019, is assigned, the said paragraphs become extracted hereinafter.

“18. Having considered the facts of the case and the findings recorded above, it would also be appropriate to briefly deal with the case law on the point as to whether once an accused after conviction at the stage of appeal is held to be a juvenile/child under the provisions of the 2015 Act, what would be the status of the trial, the conviction and sentence recorded by the Trial Court and the appellate Courts. Whether the trial itself would stand vitiated for lack of jurisdiction by the regular Sessions Court and it would be the JJB alone which could make an inquiry into the offence committed based upon the evidence led by the prosecution. If the inquiry has not been conducted by the JJB, then whether the entire proceedings need to be quashed or only the sentencing aspect would require consideration in accordance with the 2015 Act.

19...

20. There are a series of judgments on the said issue. Some have set aside the conviction, sentence and have terminated the proceedings, others have upheld the conviction but on the basis of sentence already undergone being more than the maximum permissible under the Juvenile Justice (Care and Protection of Children) Act, 2000 “2000 Act” have directed for release of the accused and third,



where after maintaining the conviction, this Court has referred the matter to the JJB for passing appropriate orders on sentence. All the judgments delivered earlier which are briefly discussed hereunder relate to the 2000 Act. Present case falls under the 2015 Act as the offence itself is of the year 2017.”

24. A reading of the above extracted paragraphs reveals, that therein the Hon’ble Apex Court took to consider whether in the wake of the juvenile/child becoming inaptly tried by the Criminal Court of competent jurisdiction constituted under the Cr.P.C., despite his/her being then not triable by the said Court whether thereby the said trial is to be declared to stand vitiated, thus for lack of jurisdictional competence, and, subsequently whether the Courts can but after quashing the verdict of conviction and consequent thereto sentence, thus proceed to remand the matter to the JJB concerned/Children’s Court, for the said JJB concerned/Children’s Court, making a re-trial of the offence carried in the relevant FIR.

25. Furthermore, the further issue which fell for consideration, was whether the entire proceedings is required to be quashed, and/or only the sentencing aspect, thus requires re-consideration, rather in accordance with The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “the Act of 2015”). The Hon’ble Apex Court after considering a series of judgments on the said issue, more specifically the judgment rendered by the Hon’ble Apex Court in case titled as “**Jitendra Singh alias Babboo Singh V. State of Uttar Pradesh**” reported in **2013 (11) SCC 193**, wherein, in paragraph Nos. 28 to 30, paragraphs whereof become extracted hereinafter, thus echoings occur, that if the juvenile is found guilty of committing the alleged offence, thereupon he cannot go unpunished, but it was also declared therein, that the punishment to be awarded to the juvenile



rather is required to be left to be imposed by the JJB concerned, as constituted under the The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as “the Act of 2000”).

“28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

29. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This reads as follows:

“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.”

30. It is clear that the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena (2012) 9 SCC 750, should be followed.”

26. In **Karan’s case (supra)**, the Hon’ble Apex Court considering the view (supra), propounded in **Jitendra Singh’s case (supra)**, thus in paragraph 30 thereof, which becomes extracted hereinabove, thus was made when the Juvenile Justice Act, 1986 (for short ‘the Act of 1986’) or the Act of 2000 were in force. However, it was stated, that when the offence committed by the juvenile in the said case, was committed when the Act of 2015 came into force, which however is not the situation in the instant case, as at the time of commission of the alleged offences, the Act of 2000 was in force, yet the Apex Court proceeded to consider Section 9, as carried in the Act of 2015 on the ground that the said Act was in force at the time of the claimed remand, being made in respect of the relevant offence. Therefore, when at the instant stage, the claimed remand is made when the Act of 2015 was in force. Resultantly, with the Hon’ble Apex Court in paragraph 30 of



Karan's case (supra), ultimately concluding, that since sub-section (3) of Section 9 of the Act of 2015, does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be a juvenile or a child, would also lose its effect, rather therein it was declared that it is only the sentence, if any, passed by the Court would be deemed to have no effect. Therefore, but obviously the above declarations made in **Karan's case (supra)**, were applicable to the espoused remand.

30. The above judgments relate to an offence covered by either the Juvenile Justice Act, 1986 "the 1986 Act" or the 2000 Act. We now proceed to briefly discuss the provisions under the 2015 Act. Section 9 of the 2015 Act is already reproduced in the earlier part of this judgment. According to sub-section (3) of section 9 of the 2015 Act, the Court which finds that the person who committed the offence was a child on the date of commission of such offence would forward the child to the JJB for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect. This does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be juvenile or a child, would also lose its effect rather it is only the sentence if any passed by the Court would be deemed to have no effect.

27. Furthermore, the additional reason for the Hon'ble Apex Court in **Karan's case (supra)**, refraining from quashing the conviction delivered to a child or a juvenile by a Court other than the JJB concerned, became founded, upon the expostulations made in paragraph 32 of **Karan's case (supra)**, paragraph whereof becomes extracted hereinafter.

32. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court



would have been completely excluded not only under section 9 of the 2015 Act but also under section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, under section 25 of the 2015 Act, it is clearly provided that any proceeding pending before any Board or Court on the date of commencement of the 2015 Act shall be continued in that Board or Court as if this Act had not been enacted. Section 25 is reproduced hereunder:

“25. 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.”

28. A reading of the said paragraphs discloses, that if the legislature intended that the conviction delivered upon a juvenile or a child was to be also made ineffective, then either the jurisdiction of the regular Session Court would have been completely excluded, thus not only under Section 9 of the Act of 2015, but also in Section 25 of the Act of 2015, provisions would have been made, that on a finding being recorded that the person being tried is a child, whereas, with Section 25, as borne in the Act of 2015, provisions whereof becomes extracted in the above paragraph, rather clearly providing, that any proceeding pending before any Board or Court on the date of commencement of the Act of 2015, shall be continued in that Board or Court as if this Act had not been enacted.

29. Consequently, in view of the above, the Hon’ble Apex Court in paragraph 33 of **Karan’s case (supra)**, paragraph whereof becomes extracted hereinafter, made a conclusion, that the verdict of conviction made upon a juvenile/child by a Court constituted under the Cr.P.C., would not



become ineffective, but only the sentence awarded vis-a-vis him, thus in excess of what is permissible under the Act of 2015, or any other correspondent thereto Act, rather is required to be accordingly modified. The reason for making the said conclusion becomes sparked from the factum, that the object under the Act of 2015, thus dealing with the rights and liberties of the juvenile, is only to ensure that the child/juvenile is brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the Act of 2015.

33. Having considered the statutory provisions laid down in section 9 of the 2015 Act and also section 7A of the 2000 Act which is identical to section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the accused who has committed a heinous offence and who did not claim juvenility before the Trial Court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

30. Preponderantly also, when it has been declared in the said extracted paragraphs, that since the juvenile in conflict with law, did not at the earliest as in the instant case, produce any credible evidence, in respect of his well premising his claim for his being a juvenile, at the time of



commission of offence. Resultantly, thereby it has also concluded, that the claim for quashing of the verdict of conviction delivered by the learned trial Judge concerned, upon the juvenile concerned, is misfounded and is liable to be rejected.

31. Therefore, this Court for the reasons to be assigned hereinafter does not deem it fit, and, appropriate to negate the verdict of conviction, as made against the appellant, by the learned trial Court concerned. However, this Court deems it fit and, appropriate to, in terms of paragraph 33 as carried in Karan' case (*supra*), modify the sentence awarded upon appellant by the learned trial Judge concerned.

32. Be that as it may, though for all the reasons to be assigned hereinafter, this Court would be upholding the verdict of conviction, as made against the appellant. However, since the relevant offence(s) became committed by the appellant at the time when the Juvenile Justice Act, 1986 (for short 'the Act of 1986) or the Juvenile Justice (Care and Protection of Children) Act of 2000 (for short 'the Act of 2000) was in force. Resultantly, when the Act of 2015 but obviously became subsequently enacted, therebys the provisions of the said Act are inapplicable to the facts in hand. The effect of the above, is that, in terms of the declarations made by the Apex Court in case titled as *Satya Deo versus State of U.P.* reported in *(2020) 10 Supreme Court Cases 555*, expostulations of law whereof become carried in paragraphs 6, 12 and 23 to 26, paragraphs whereof becomes extracted hereinafter, wherein, it has been declared that the accused cannot be denied his right to be tried as a juvenile when he was less than 18 years of age at the time of commission of offence. Conspicuously also, when it has been declared that the right which he acquired became



fructified under the Act of 2000.

“6. The conundrum is in light of the definition of ‘juvenile’ under the 1986 Act, which was below sixteen years in case of a boy and below eighteen years in case of a girl on the date the boy or girl is brought for first appearance before the court or the competent authority, whereas the 2000 Act, as noticed below, does not distinguish between a boy or girl and a person under the age of eighteen years is a juvenile. Further, under the 2000 Act, the age on the date of commission of the offence is the determining factor.

x x x x x

12. Thus, in respect of pending cases, [Section 20](#) authoritatively commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence. The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the provisions of the 2000 Act.

x x x x x

23. [Section 25](#) is a non-obstante clause which applies to 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 the 2015 Act, that is, 31.12.2015. It states that the pending proceedings shall be continued in that Board or court as if the 2015 Act had not been passed. In [Akhtari Bi v. State of M.P.](#), it was observed that the right to appeal being a statutory right, the trial court’s verdict does not attain finality during the pendency of the appeal and for that purpose the trial is deemed to be continuing despite conviction. Thus, the use of the word ‘any’ before the board or court in [Section 25](#) of the 2015 Act, would mean and include any court including the appellate court or a court before which the revision petition is pending.



This is also apparent from the use of the words ‘a child alleged or found to be in conflict with law’. The word ‘found’ is used in past-tense and would apply in cases where an order/judgment has been passed. The word ‘alleged’ would refer to those proceedings where no final order has been passed and the matter is sub-judice. Further, [Section 25](#) of the 2015 Act applies to proceedings before the board or the court and as noticed above, it would include any court, including the appellate court or the court where the revision petition is pending.

24. *In the context of [Section 25](#), the expression ‘court’ is not restricted to mean a civil court which has the jurisdiction in the matter of ‘adoption’ and ‘guardianship’ in terms of clause (23) to [Section 2](#) of the 2015 Act. The definition clause is applicable unless the context otherwise requires. In case of [Section 25](#), the legislature is obviously not referring to a civil court as the section deals with pending proceedings in respect of a child alleged or found to be in conflict with law, which cannot be proceedings pending before a civil court. Since the Act of 2015 protects and affirms the application of the 2000 Act to all pending proceedings, we do not read that the legislative intent of the 2015 Act is to the contrary, that is, to apply the 2015 Act to all pending proceedings.*

25. *[Section 6](#) of the General Clauses Act, 1897 that provides the consequence of “repeal” of an enactment reads:*

6. *Effect of repeal. Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:*

xxx

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

26. *Consequently, in light of [Section 6](#) of the General Clauses Act read with [Section 25](#) of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a*



right which he acquired and has fructified under the 2000 Act on 1.4.2011. In terms of [Section 25](#) of the 2015 Act, the 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced. (In the present case, we are not required to examine and decide the question whether 2000 Act or the 2015 Act would apply when the offence was committed before the enactment of the 2015 Act but the charge-sheet was filed after enactment of the 2015 Act. The answer would require examination of clause (1) to [Article 20](#) of the Constitution and several other aspects as the 2015 Act provide an entirely different regime in respect of children in conflict with law and the procedure to be followed in such cases. These aspects and issues have not been argued before us.”

33. Therefore, when in terms of Section 25 of the Act of 2015, there is an explicit statutory permissibility qua the continuance of operation of the Act of 2000, wherein there is no provision alike the one in the Act of 2015, hence relating to after a psychological test being made upon the juvenile in conflict with law, thus for thereby gauging whether he can be tried as an adult, besides upon an affirmative psychological test being made upon the juvenile in conflict with law, rather results in his being declared to become amenable to be tried as an adult. Resultantly, but when thereby the sentences, as would be imposable, upon him as an adult, can also be imposable upon a juvenile, who has been tried by a Criminal Court of competent jurisdiction, as, envisaged in the Cr.P.C.

34. Therefore, irrespective of the extant adulthood of the present appellant, the continuance of operation of the Act of 2000, begets the effect that, thereby the rights conferred upon a juvenile in conflict with law to receive the sentence as ordained therein, do become fructified, thereby they cannot become snatched at this stage, thus irrespective of the present appellant now attaining adulthood.



Dying declaration of the deceased

35. Prior to the deceased Sher Singh, ultimately succumbing to the injuries, he made a dying declaration, wherein, he inculpated the convict-appellant. Prior to the deceased Sher Singh making a dying declaration, as carried in Ex. P-5, he was declared fit, by the doctor concerned, to make a statement.

36. However, for the reasons to be assigned hereinafter, this Court comes to the conclusion, that the dying declaration, as embodied in Ex. P-5, is worthy of acceptance. The prime reason being that the police official concerned, on 24.5.2000, thus moved an application, to which Ex. P-4 becomes assigned, rather before the doctor concerned, whereby he sought an opinion from the doctor concerned qua whether the injured was fit to make a statement. The doctor concerned, made his apposite opinion at 4.15 A.M., on 24.5.2000 (Ex. P4/A), wherein, the injured was declared unfit to make a statement. Thereafter, vide opinion Ex. P4/B of the doctor concerned, thus made at 11.00 A.M. on 24.5.2000, the injured was declared fit to make the statement. The makings of Ex. P4, P4/A and P4/B occur on the very same day when the declarant, through a dying declaration, as embodied in Ex. P5, rather inculpated the convict. The declaration of fitness of deceased Sher Singh, to make a statement, as carried in Ex. P4/B, has been proven by PW-3. Therefore, the statement of the deceased Sher Singh (Ex. P-5), becomes a potent piece of evidence, as it is a validly made dying declaration, and, thereto a grave evidentiary solemnity is to be assigned.

37. Be that as it may, the hallmark of gravest evidentiary solemnity becoming assignable to it is, qua it, being provenly authored by the deceased, and, that too when he was in the fittest mental state to make it.



38. For determining the above facet, an allusion is to be made to the deposition of PW-3, who, on the request of HC Sudhir Kumar, made a proven opinion, as embodied in Ex.P4/B, that the patient Sher Singh, was fit to make a statement. The above statement was made by him, during the course of his receiving treatment at the hospital concerned, wherein, he assigned an incriminatory role to the accused in the extant crime event. The original of the dying declaration is carried in Ex. P5. Since the original of the dying declaration has been placed on record, therefore, it comprises the apt primary evidence, in respect of the incriminatory echoings made therein against the accused concerned.

39. Moreover, reiteratedly the apposite best proof in respect of authenticity of its contents, besides in respect of the fit cognitive abilities, of the declarant, rather at the relevant time, thus becomes comprised in the apposite opinion Ex. P4/B, wherein, the declarant has been declared to be fit to make a statement. Resultantly, reiteratedly the dying declaration, as made by deceased Sher Singh, is to be concluded, to be free from any vices of his being coached, and, goaded to make it. In nutshell, the proven dying declaration, as embodied in Ex. P5, does constitute a potent incriminatory evidence against the convict-appellant and, also hence thereby, the charge drawn against him, becomes proven to the hilt.

Signature disclosure statement of convict-appellant
Gaurav Kumar @ Monu Ex. P-27

40. During the course of investigations, being made into the appeal FIR, convict-appellant Gaurav Kumar @ Monu, thus made his signature disclosure statement, to which Ex. P-27 becomes assigned. The signature



disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

“x x x x

On 23.5.2000 I along with Hansraj Charaya r/o Jagdish Colony, Hansi and our servants Raghbir s/o Sube Singh Jat, r/o Kherri Gagan and Durga s/o Gopal caste Rao r/o Almoda, P.S. Jagg and Harish by a jeep No. HR-22/A-0777 owned by us, reached the house of Sher Singh s/o Narayan Dass Arora r/o Boga Colony and brought him with us. We have money dealing with him. At that time Raghbir was searing the uniform of Kirshan gatement. After taking Sher Singh in our jeep we straightway brought him in Komal Floor Mill Jind road. We all gave beatings to Sher Singh. I was having an iron pipe and remaining were having dandas. I can point out the place in the Komal Floor Mill where Sher Singh was beaten with the pipe which I used at the time of giving beatings to Sher Singh. I have kept concealed towards the western side under the seat in the office of the Komal factory. Nobody knows else to me. I can get recovered the same.”

41. Pursuant to the above made signed disclosure statement, the convict-appellant ensured the recovery of an iron pipe, which was taken into police possession, through recovery memo, to which Ex. P-28 becomes assigned.

42. The disclosure statement (*supra*), carries thereons the signature, in English, of the convict-appellant. In his signed disclosure statement (*supra*), the convict-appellant, confessed his guilt in committing the crime event, by inflicting fatal injuries on the deceased concerned, hence with the user of the incriminatory weapon of offence. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, at the place concerned, and, qua his alone being aware about the location of his



hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon of offence to the investigating officer concerned, thus from the place of his hiding, and, keeping the same.

43. The above disclosure statement, does acquire, the utmost evidentiary solemnity, as thereons exists the signature, in English, of the convict-appellant, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald nor a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through proven recovery memo Ex. P-28, the convict-appellant, caused the recovery of the incriminatory weapon of offence, to the investigating officer concerned.

44. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. P-28, has not been proven to be false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict-appellant to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same incriminatory weapon, which did become used by convict-appellant, in causing the relevant fatal assault.



MLR of injured/deceased Sher Singh

45. Dr. S.K.Gupta, who medico legally examined the injured/deceased Sher Singh, has stepped into the witness box as PW-2, and, during the course of his examination-in-chief, he has proven the MLR of the said injured, to which Ex. P2, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Sher Singh (since deceased).

- “1. Defused swelling of left and right side of chest wall in front and back. Tenderness was present. Surgical emphysema was present. The injuries were kept under observation, subject to surgeon opinion and x-ray of chest was advised.*
- 2. Red contusion 6 cm x 2 cm on right side of face below eyes.*
- 3. Lacerated wound 1-1/2 x 1/2 cm. On inner mucosa of middle of upper lip. Complaint of fall of teeth gum was raw surfaced at left lower side.*
- 4. Abrasion 1-1/2 x 1/2 cm on back of left elbow joint.*
- 5. An abrasion 1 x 1/2 cm and 1/1/4 x 1/2 cm on back of right elbow joint.”*

46. The said witness opined that vide his opinion Ex. P4/A he declared the said injured to be unfit to make the statement. The said witness also opined, that the injuries (supra) could be caused by fist blows, danda blows and iron pipe blows.

Post-mortem report

47. The post-mortem report, to which Ex. P-40 is assigned, became proven by PW-12. PW-12 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Sher Singh, thus his noticing thereons the hereinafter ante mortem injuries-

- “1. There was diffuse swelling on both sides of the chest with swelling of the skin of the adjacent area.*



2. *Contusion on the right side face just below the right eye.*
3. *Lacerated wound on the inner side of the mouth with loss of adjacent teeth.*
4. *Abrasions on the back of the right elbow.*
5. *Abrasion on the left elbow joint.”*

48. Furthermore, PW-12 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to cardio-respiratory as a result of collapse of left lung. All the injuries were stated to be ante mortem in nature, and, were also stated to be sufficient to cause death in the ordinary course of nature. The said witness were also shown the incriminatory weapons of offence, whereupon, he deposed that the said injuries on the person of the deceased could be possible with the users thereons, thus of the said incriminatory weapons of offence and of fist blows.

49. The above made echoings by PW-12, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-12 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoing, as made by PW-12, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

50. Thus, conjoint readings of the report of the doctors concerned, who respectively proved the apposite MLR, and, of the post-mortem report of the deceased concerned, thus with the efficaciously proven signed disclosure statement (Ex. P-27) as made by the convict-appellant, besides also with the consequent thereto made valid recovery through recovery memo (Ex.P-28), does thereby foster an inference, that thereby there is



inter se corroboration *inter se* the dying declaration (Ex.P-5) with the medical account, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final order

51. Consequently, the instant appeal is partly allowed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. However, the sentence of life imprisonment, as imposed upon the convict-appellant by the learned Court concerned, is set aside and modified in the hereinafter manner, and, in terms of the verdict rendered by the Apex Court in *Satya Deo's* case (supra).

52. The matter is remanded to the Juvenile Justice Board concerned, for passing an appropriate order/direction under Section 15 of the Act of 2000, including the question of determination and payment of appropriate quantum of fine and compensation to be awarded to the family of the deceased.

53. Therefore, the jail authorities concerned, are directed to produce appellant Gaurav Kumar alias Monu before the Juvenile Justice Board concerned, within seven days from the date of receipt of a copy of this judgment. On his production before the Juvenile Justice Board, the latter shall pass an appropriate order regarding detention and custody of the appellant and, thereafter would proceed to pass order/directions under the Act of 2000.

54. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.



- 55. Records be sent down forthwith.
- 59. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 13, 2024
Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No