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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 09th SEPTEMBER, 2025

IN THE MATTER OF:

+ **CRL.A. 921/2002 & CRL.M.A. 10184/2025**

AJAY

.....Appellant

Through: Mr. Krishan Kumar and Mr. Shivam
Bedi, Advocates

versus

STATE

.....Respondent

Through: Mr. Aashneet Singh, APP for the
State
Inspector Praveen Kumar, PS Nangloi

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The instant Appeal is directed against the Judgment and Order dated 12.08.2002 and 14.08.2002, passed by learned ASJ, Delhi in SC No. 82/2000 arising out of the FIR No. 304/2000 registered at Police Station Nangloi. By the Order on Sentence dated 14.08.2002, the Appellant was convicted for the offences under Sections 364 & 302 of the IPC, and has been sentenced to undergo rigorous imprisonment for life along with a fine of Rs.5000/-, and in case of default in payment of fine, the Appellant has been further directed to undergo simple imprisonment for a period of 03



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months.

2. Pending appeal, an application being CRL.M.A. 10184/2025 has been filed under Section 528 BNSS read with Section 7 A of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as “**JJ Act, 2000**”) for declaring the Appellant to be a juvenile and set aside the Order on Sentence dated 14.08.2002 convicting the Appellant for the offences committed under Sections 364 & 302 of the IPC.

3. Shorn of unnecessary details, the facts, in brief, leading to the present Appeal are as under:-

- a. It is the case of the Prosecution that on 16.04.2000 at about 05.20 AM, an information was received at Police Station Nangloi that a child two and a half years of age was kidnapped from his house in village Ranhola.
- b. On the basis of information a DD No. 29-A was recorded and SI Ghanshyam along with a Constable Subhash went to the house from where the child was missing and the statement of the Complainant/Manju was recorded.
- c. Consequently, FIR No. 304/2000 under Sections 364 of the IPC was thus registered at Police Station Nangloi and the investigation commenced thereafter by SI Ghanshyam.
- d. It is the case of the Prosecution that the Appellant demanded a sum of Rs. 15,000/- for the return of the child.
- e. Subsequently, Appellant and another boy named Dharmender were apprehended by the people of the locality.
- f. Disclosure statements were given by the accused which led the Police to a drain on the back of the house where the dead body of the



child was recovered. After recovery of the dead body of Kundan, Section 302 IPC was added in the chargesheet.

g. Investigation was concluded and chargesheet was filed. The Appellant claimed trial on 04.01.2001.

h. On 06.05.2000, a Bone Ossification Test of the Appellant/Ajay, who claimed to be a minor, was conducted at Deen Dayal Upadhyay Hospital, New Delhi. A Report was made on 08.05.2000 where the doctor gave his opinion that the Bony age of the Appellant is more than 17 years and less than 18 years.

i. The age of juvenility as given under Section 2 (h) of Juvenile Justice Act, 1986, (*hereinafter referred to as the 'JJ Act, 1986'*) is 16 years for boys and 18 years for girls and the Appellant was more than 16 years when proceedings under the IPC were initiated against the Appellant.

j. During the trial JJ Act, 2000 came into force on 01.04.2001. Material on record indicates that when the JJ Act, 2000 came into force, the trial was continued. By the Judgment and Order dated 12.08.2002 and 14.08.2002, the Appellant was convicted for the offences under Sections 364 and 302 of the IPC and was sentenced to undergo rigorous imprisonment for life.

4. During the pendency of the Appeal, a question has now been raised as to whether the Appellant could have been proceeded under the ordinary law of the land or should be treated as and juvenile and proceeded under the JJ Act, 2000.

5. The issue as noticed in the Order dated 03.09.2025 is no longer *res integra*, and is covered by a decision given by Five Bench Judges of the



Apex Court in Pratap Singh v. State of Jharkhand, 2005 3 SCC 551, where two questions were raised for consideration of the Apex Court which reads as under:-

“(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when his produced in the Court/contempt authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.”

6. The aforementioned questions were decided as under:-

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

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

7. A perusal of the above noted conclusion shows that the date for determining the age of a juvenile is the age when the offence was committed. The Appellant was about 16 years of age when the offence was committed and, therefore, he was to be proceeded under the ordinary law of land. However, the Apex Court under the second question has held that the JJ Act, 2000 is applicable in a proceeding initiated under the JJ Act 1986 which is pending when the JJ Act, 2000 came into force and the Appellant



had not completed the 18 years of age on 01.04.2001.

8. The Bone Ossification Test held on 08.05.2000 showed that the Appellant was more than 17 years and less than 18 years of age.

9. Rule 22(5) of the Juvenile Justice (Care and Protection of Children) Rules, 2001 which have been brought out in exercise of powers conferred under Section 88 of the JJ Act, 2000 lays down the procedure as how to determine the age of a juvenile.

10. Rule 22(5) of the Juvenile Justice (Care and Protection of Children) Rules, 2001 is produced under:-

“(5) In every case concerning a juvenile by a corporation or a child, the Board shall either obtain,-

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

(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.”

(emphasis supplied)

11. Neither the Appellant nor the Prosecution have produced any Birth



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Certificate of the Appellant given by a Corporation or a Municipal Authority, certificate from the school first attended or the matriculation certificate of the Appellant which could have provided the exact date of birth of the Appellant.

12. In the absence of the above, this Court is only left with the medical opinion/report. The medical opinion/report dated 08.05.2000 indicates that the Appellant was more than 17 years and less than 18 years of age. It is now well settled that in case of a doubt, the Courts have to lean in favour of juvenility and not the other way round.

13. Section 2(k) of the JJ Act, 2000 defines the juvenility of a person which reads as under:-

“2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age; ”

14. Therefore, on the date when the JJ Act, 2000 came into force, the Appellant was a juvenile in terms of the JJ Act, 2000.

15. The Judgment of the Apex Court in Pratap Singh (*supra*) has been explained in Hari Ram v. State of Rajasthan & Anr., 2009 (13) SCC 211.

Relevant paragraphs of the same reads as under:-

“22. Subsequently, after the decision of a Constitution Bench of this Court in Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551 : 2005 SCC (Cri) 742] , the legislature amended the provisions of the Act by the Amendment Act, 2006, by substituting Section 2(l) to define a “juvenile in conflict with law” as a “juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence” (emphasis supplied) and to include Section 7-A which reads as follows:

“7-A. Procedure to be followed when claim of



juvenility is raised before any court.—(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.”

(emphasis supplied)

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37. The said decision in Pratap Singh case [(2005) 3 SCC 551 : 2005 SCC (Cri) 742] led to the substitution of Section 2(l) and the introduction of Section 7-A of the Act and the subsequent introduction of Rule 12 in the Juvenile Justice Rules, 2007, and the amendment of Section 20 of the Act. Read with Sections 2(k), 2(l), 7-A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the section most



relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1-4-2001, when the Juvenile Justice Act, 2000, came into force.

38. The same is, accordingly, reproduced hereinbelow:

“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 (l) 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.”



The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.

39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

40. At this point it may be noted that the decision of the Constitution Bench in Pratap Singh case [(2005) 3 SCC 551 : 2005 SCC (Cri) 742] was rendered at a point of time when the amendments to Sections 2(l) and 20 and the introduction of Section 7-A had not yet been effected, nor was Rule 12 of the 2007 Rules available.

41. Several decisions on the applicability of the 2000 Act to children who were above 16 but below 18 years on the date of commission of the offence have been



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rendered after the Juvenile Justice Act, 2000, came into force and several others were rendered after the amendments were introduced in the said Act by Amendment Act 33 of 2006 and the introduction of the 2007 Rules.”

16. Since, the Bone/Ossification Test on 06.05.2000 shows that the Appellant was more than 17 years and less than 18 years and the one year benefit is given as on 01.04.2000, the Appellant would not be over the age of 18 years.

17. Resultantly, the Order on Sentence dated 14.08.2002 is set aside.

18. In view of the fact that the Appellant has already spend more than 03 years in prison, which is more than the maximum prescribed punishment in the JJ Act, 2000, this Court does not find any reason to remit the matter back to the Justice Juvenile Board for further consideration and for trial. The Appellant be released, if not required in any other matter/case.

19. The present Appeal is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

SEPTEMBER 09, 2025

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