

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.763 OF 2003

Jitendra Singh @ Babboo Singh & Anr. ..Appellants

Versus

State of U.P. ..Respondent

O R D E R

T.S. THAKUR, J.

1. The appellants in this appeal by special leave have assailed their conviction for offences punishable under Section 304-B and 498-A IPC and sentence of imprisonment of seven years under the former and two years under the latter provision besides a fine of Rs.100/- each. Criminal Misc. Petition No.16974 of 2010 filed by appellant Jitendra Singh prays for permission to raise an additional ground in support of the appeal to the effect that he was a minor within the meaning of Section 2(k) of the Juvenile (Care and Protection of Children) Act, 2000 on the date of the commission of offence and that he ought to have been dealt with under the said Act.

2. The case of the appellant as set out in the application is that he was born on 3rd August, 1974 meaning thereby that he was just about 13 years 8 months and 23 days old on 24th May, 1988 the date when the alleged incident is said to have taken place. In support of his assertion that he was a minor on the date of the incident, the appellant has placed on record along with his application a copy of School Leaving Certificate No.46 and Marks-sheet No.6031 both dated 17th November, 2009 issued by the Poorav Madhyamik Vidyalaya, Sohayee Bagh, Raibareilly. The application points out that the question whether he was minor on the date of the incident had been raised by the appellant at the earliest available opportunity when an application for bail was moved on his behalf. It is alleged that the appellant had been got medically examined to determine his age which was certified to be around 17th years only. The medical report was then made a basis by the High Court for grant of bail to him in terms of order dated 25th November, 1988. Relying upon the provisions of Section 7A of the Juvenile (Care and Protection of Children) Act, 2000 the appellant seeks permission to raise the question of his juvenility in the present proceedings and contends that the provisions of Section 7A and the pronouncements of

this Court entitle him to raise a plea regarding his age at any stage of the proceedings including the proceedings before this Court. The averments made in the application are supported by an affidavit filed alongwith the application.

3. When the application came up for hearing before this Court Mr. Sushil Kumar Jain, learned counsel for the appellant argued that the question whether or not the appellant was a juvenile within the meaning of the Act aforementioned could be raised and shall have to be determined by this Court, no matter no such plea was taken at the trial or even in appeal before the High Court on behalf of the appellant. Reliance in support of that submission was placed by Mr. Jain on the decisions of this Court in **Jayendra and Anr. v. State of Uttar Pradesh** (1981) 4 SCC 149, **Gopinath Ghosh v. State of West Bengal** 1984 (Supp) SCC 228, **Bhoop Ram v. State of U.P.** (1989) 3 SCC 1, **Brij Lal v. Prem Chand and Anr.** 1989 Supp (2) SCC 680, **Bhola Bhagat v. State of Bihar** (1997) 8 SCC 720 and **Hari Ram v. State of Rajasthan** 2009 (13) SCC 211. It was further argued that the material placed on record by the appellant in the form of a School Leaving Certificate and the Marks-sheet as also the order passed

by the High Court granting bail to the applicant in which the medical examination of the appellant and the determination of his age have been referred to, sufficiently establish on a *prima facie* basis the case of the appellant that he was a minor on the date of the incident. It was submitted even when the offence was committed before the commencement of Juvenile (Care and Protection of Children) Act, 2000 the question whether benefit under the said Act could be extended to cases where the offences were committed prior to 1.4.2001 the date when the said Act came into force, stands concluded in favour of the appellant by the decision of this Court in **Hari Ram's** case (supra).

4. On behalf of the respondent it was argued that although delay in making a claim of juvenility was not by itself enough to justify refusal of an enquiry into the matter, the appellant had to establish a strong *prima facie* case in support of his claim to persuade this Court to direct an enquiry into the determination of his age on the date of the incident. Reliance in support was placed upon a decision of this Court in **Pawan v. State of Uttaranchal** (2009) 15 SCC 259.

5. Having given our careful consideration to the submissions made at the bar we are of the opinion that in the facts and circumstances of this case an enquiry for determining the age of the appellant-Jitendra Singh @ Babboo Singh on the date of the commission of the offence shall have to be directed. It is true that in the ordinary course any one claiming to be a minor on the date of the incident ought to make such a claim at the earliest available opportunity before the Trial Court or at least before the High Court, but the very fact that no such claim is for any reason made, may not by itself disentitle him to do so before the Apex Court. The decision of this Court in **Gopinath Ghosh, Bhoop Ram** and **Bhola Bhagat's** cases (supra) and in **Hari Ram's** case have recognized the beneficial nature of the provisions enacted by the Parliament and held that a technical plea based on delay in the making of the claim of juvenility would not itself disable the person concerned from making such a claim.

6. In **Pawan's** case (supra) reliance whereupon was placed on behalf of the respondent, the delay in the making of claim to juvenility was not held to be fatal provided the claim was supported by evidence that would

prima facie establish that the claimant was a juvenile on the date of the commission of the offence. The burden of making out a prima facie case for directing an enquiry has been in our opinion discharged in the instant case in as much as the appellant has filed along with the application a copy of School Leaving Certificate and the Marks-sheet which mentions the date of birth of the appellant to be 24th May, 1988. The medical examination to which the High Court has referred in its order granting bail to the appellant also suggests the age of the appellant being 17 years on the date of the examination. These documents are sufficient at this stage for directing an enquiry and verification of the facts. We may all the same hasten to add that the material referred to above is yet to be verified and its genuineness and credibility determined. There are no doubt certain tell tale circumstances that may raise a suspicion about the genuineness of the documents relied upon by the appellant. For instance the deceased Asha Devi who was married to the appellant was according to Dr. Ashok Kumar Shukla, Pathologist, District Hospital Rai Bareli aged 19 years at the time of her death. This would mean as though the appellant husband was much younger to his wife which is not the usual practice in

the Indian context and may happen but infrequently. So also the fact that the appellant obtained the School Leaving Certificate as late as on 17th November, 2009 i.e. after the conclusion of the trial and disposal of the first appeal by the High Court, may call for a close scrutiny and examination of the relevant school record to determine whether the same is free from any suspicion, fabrication or manipulation. It is also alleged that the electoral rolls showed the age of the accused to be around 20 years while the extract from the Panchayat Register showed him to be 19 years old. All these aspects would call for close and careful scrutiny by the Court below while determining the age of the appellant. The date of birth of appellant Jitendra Singh's siblings and his parents may also throw considerable light upon these aspects and may have to be looked into for a proper determination of the question. Suffice it to say while for the present we consider it to be a case fit for directing an enquiry, that direction should not be taken as an expression of any final opinion as regards the true and correct age of the appellant which matter shall have to be independently examined on the basis of the relevant material.

7. In the result we allow the appellant to urge the additional ground regarding juvenility of the appellant on the date of the commission of the offence and direct the Trial Court to hold an enquiry into the said question and submit a report as expeditiously as possible, but not later than four months from today. We make it clear that the Trial Court shall be free to summon the concerned School, Panchayat or the Electoral office record or any other record from any other source which it considers necessary for a proper determination of the age of the appellant. We also make it clear that in addition to the above, the Trial Court shall be free to constitute a Medical Board comprising at least three experts on the subject for determination of the age of the appellant, based on medical tests and examination.

8. The hearing of the appeal shall in the meantime stand adjourned and the case listed in the month of April, 2011. A copy of this order shall be despatched to the Trial Court for compliance forthwith. The appellant shall appear before the Trial Court on 6th December, 2010 and associate with the enquiry. A copy of the application and the accompanying documents shall also be forwarded to the Trial Court along with a copy of this order.

.....J.
(MARKANDEY KATJU)

.....J.
(T.S. THAKUR)

New Delhi
November 19, 2010