



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Appeal No. 280/1991

Kailash Son of Shri Ratan, resident of Kishanpura Thana
Rawanjana Dugar

----Appellant

Versus

State of Rajasthan

----Respondent



For Appellant(s) : Mr. Vishnu Bohra, Adv.
For Respondent(s) : Mr. Imran Khan, PP

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Judgment

Reserved on : 21/05/2024
Pronounced on : 30/05/2024

REPORTABLE

For convenience of exposition, this judgment is divided in the
following parts: -

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1. The term "Juvenile" has been originated from the Latin word "*Junvenilis*". It means someone young & immature. It can be referred to as the early stage of development, youthfulness or lack of maturity. A Juvenile is a child who has not reached the age at which they may be held accountable for their criminal activities in the same way that an adult can. When referring to a young criminal offender, the term "Juvenile" is used. As a result, a Juvenile is a child who is accused of doing certain acts or omissions that are illegal and have been classified as such by penal laws.

2. In our country, child crime is classified as a juvenile crime. i.e., delinquent acts committed by children under a specified age are classified as child crimes.

3. Whether any Juvenile below the age of 16 years can be sentenced to undergo imprisonment like an adult criminal? Whether a child criminal who has not claimed himself as "Juvenile" during the course of trial can be convicted and sentenced to undergo sentence with other adult criminals?

4. Here in the instant case the appellant was tried as an accused of committing offence of rape and after trial he was found guilty and sentenced to undergo seven years imprisonment. He never took the plea that he was less than 13 years of age, at the time of commission of offence, during the course of trial and at the time of passing of the judgment. Now, for the first time, he is claiming himself as a "child" below the age of 13 years, at the time of commission of offence and is seeking the benefit of being Juvenile, for the first time, at the stage of final hearing of this appeal, i.e. after 33 years of his conviction and sentence. It is in this





background, the issue raised now, after a lapse of more than three decades, is required to be considered and decided by this Court.

Factual Matrix:-

5. Challenge in this appeal is made to the impugned judgment dated 31.07.1991/01.08.1991 passed by the Court of learned Sessions Judge, Sawai Madhopur in Sessions Case No.36/1990, by which the appellant has been convicted for the offence punishable under Section 376 IPC and has been sentenced to undergo seven years rigorous imprisonment.

6. The relevant facts, very briefly stated, are that on 06.12.1989, an FIR (Ex.P-2) was registered with the Police Station Rawanjna Doongar, District Sawai Madhopur, whereby allegations were levelled against the appellant by the complainant Jagannath that the appellant attempted to commit rape with the prosecutrix 'R' in the field. After investigation, charge-sheet was submitted against the appellant under Section 376 IPC and under Section 201 IPC against the co-accused Smt. Sunder, as she washed the cloths of the prosecutrix 'R', after the occurrence in order to destroy the evidence.

7. Charges were framed under Sections 376 and 201 IPC against the appellant and the co-accused Smt. Sunder, respectively. Both of them denied the charges and claimed trial. During the course of trial, the prosecution examined as many as 9 witnesses in support of its case. Thereafter, explanation of the accused persons was recorded under Section 313 CrPC wherein they denied their participation in the incident and submitted that due to enmity, they have been falsely implicated in the present case. But in defence, no



evidence was produced by them. After completion of trial, the co-accused Smt. Sunder was acquitted of the charge under Section 201 IPC but the appellant was convicted and sentenced, as stated above, vide impugned judgment dated 31.07.1991/01.08.1991.

Submissions on behalf of the Appellant:-

8. Counsel for the appellant submits that as per the allegations levelled by the prosecutrix 'R' (PW-9), the appellant committed rape upon her. Counsel submits that the eye-witness of the incident Bhuli (PW-4) has not supported the version of prosecution and she has been declared hostile. Counsel submits that the allegations of rape are not corroborated by the medical evidence and even then, the appellant has been held guilty by the learned Trial Court. Counsel submits that the date of birth of the appellant is 11.11.1977 and the date of offence is 02.12.1989, thus, the appellant was a juvenile on the date of occurrence and his age was 12 years and 21 days at the relevant point of time. In support of his contention, he submitted the Transfer Certificate issued by the Government Upper Primary School, Khanpur, District Sawai Madhopur along with an application under Section 391 CrPC. Counsel submits that even the prosecutrix 'R' as well as her family members have submitted a document on record indicating therein that the FIR was registered against the appellant due to some misunderstanding and now they do not want to prosecute the appellant. Counsel submits that under these circumstances, the judgment passed by the Trial Court may be quashed and set aside and the appellant be acquitted from the charges levelled against him. Counsel further submits that even if this Court is of the view



that the conviction of the appellant could not be quashed on the basis of the evidence led by the prosecution witnesses, including the statements of the prosecutrix 'R', then also the sentence awarded to the appellant can be quashed, as the appellant was juvenile at the time of occurrence. In support of his contention, counsel has placed reliance upon the judgment passed by the Apex Court in the case of **Gurpreet Singh Vs. State of Punjab** reported in **2005 (7) Supreme 571**. In the alternative, counsel argued that now the age of the appellant is more than 46 years and he was juvenile at the time of occurrence, hence, he be released on the sentence already undergone by him after conviction.

Submissions by the Public Prosecutor:-

9. Per contra, learned Public Prosecutor opposed the prayer made by counsel for the appellant and submits that the allegation of rape against the appellant has been fully established by the prosecution by producing cogent evidence. Counsel submits that the plea of juvenility cannot be taken now at this belated stage as no such plea was ever taken by the appellant during the course of trial. Hence, under these circumstances, the Trial Court has not committed any error in finding the appellant guilty for the offence punishable under Section 376 IPC and thereby sentenced him to undergo seven years rigorous imprisonment. Counsel submits that under these circumstances, interference of this Court is not warranted.

Analysis & Discussions:-



10. Heard and considered the submissions made at Bar and perused the material available on record.

11. During pendency of this appeal, the appellant submitted an application under Section 391 CrPC for taking additional evidence on record i.e. the Transfer Certificate of the appellant issued by the Head Master of Government Upper Primary School, Khanpur (Khandar), District Sawai Madhopur and also the compromise application submitted by the prosecutrix 'R' and her parents for acquitting the appellant, as they have no objection if the conviction and sentence of the appellant is quashed by this Court.

(A) Whether plea of juvenility can be taken at appellate stage:-

12. By way of filing the application under Section 391 CrPC and placing reliance on the School Transfer Certificate of the appellant, the learned counsel tried to establish the fact on record that as per school record of Class-I, the date of birth of the appellant is 11.01.1977, whereas the date of occurrence was 02.12.1989, hence, the age of the appellant was 12 years and 11 months, on the day when the alleged offence was committed and he was juvenile on that day. Hence, he could not be sentenced to undergo 7 years imprisonment, even if he was found guilty and convicted under Section 376 IPC.

13. Now the issue which comes before this Court is that whether the plea of juvenility can be taken by the appellant, at the stage of appeal, more particularly when the same was not taken during the course of trial and trial was conducted against him, as if he was an adult on the date of occurrence.



14. Indisputedly, during pendency of this appeal, before this Court, the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred as 'the JJ Act, 2015') came into force, which provides a comprehensive mechanism to consider the prayer of juvenility, raised on behalf of an accused-appellant, claiming to be a child, on the date of commission of offence. The provision to Section 9(2) of the JJ Act, 2015 clearly lays down that the plea of juvenility can be raised before any Court and it shall be recognized at any stage, even after final disposal of the case.

15. There are series of judgments of Hon'ble Supreme Court which hold that the plea of juvenility, even if, not taken before the Trial Court, can be taken before the High Court and the Hon'ble Supreme Court.

16. Guidelines laying down the standards for evaluating the claim of juvenility for the first time came before the Hon'ble Apex Court in the case of **Abuzar Hossain Vs. State of West Bengal** reported in **(2012)10 SCC 489** and the same are quoted in para 39, 39.1 to 39.5, which are reproduced as under:-

"39. Now, we summarise the position which is as under:

39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.





39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415] and Pawan [(2009) 15 SCC 259] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of



their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.”

17. In the case of **Vinod Katara Vs. State of Uttar Pradesh** reported in **2022 SCC Online SC 1204**, the Hon’ble Apex Court directed the Sessions Court to conduct an inquiry regarding the age of the accused, as per law, even though, he had crossed the age of 50 years and his appeal, against conviction, was rejected by the Hon’ble Supreme Court taking into consideration the aspect regarding determination of plea of juvenility, at the belated stage. The Apex Court dealt with the situation in para 51 to 55 in the following manner:-

“51. Ideally, there should not be any dispute as to the age of a person if the birth is registered in accordance with law and date of birth is entered in the school records on the basis of genuine record of birth. However, in India, the factors like poverty, illiteracy, ignorance, indifference and inadequacy of the system often lead to there being no documentary proof of a person's age. Therefore, in those cases where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to for age determination in absence of the documents enumerated in Section 94 of the Act 2015. The rule allowing plea of juvenility to be raised at a considerably belated stage has its rationale in the contemporary child rights jurisprudence which requires the stakeholders to act in the best interest of the child.

52. In *Court On Its Own Motion v. Dept. of Women and Child Development*, reported in 2012 SCC OnLine Del 2774, the petitioners therein highlighted that how several hundred children were languishing in the Tihar Jail because the police mentioned them as adults in the arrest memo.

53. The same is the story in the State of Uttar Pradesh which led the High Court of Allahabad to pass the order in Writ Petition Public Interest Litigation referred to above in para 6.

54. Awareness about the rights of the child and correlated duties remain low among the functionaries of





the juvenile justice system. Once a child is caught in the web of adult criminal justice system, it is difficult for the child to get out of it unscathed. The bitter truth is that even the legal aid programmes are mired in systemic bottlenecks and often it is only at a considerably belated stage of the proceeding that the person becomes aware of the rights, including the right to be differently treated on the ground of juvenility.

55. What needs to be kept in mind is the main object and purpose of the Juvenile Justice Act. The focus of this legislation is on the juvenile's reformation and rehabilitation so that he also may have an opportunity to enjoy as other children. In *Pratap Singh* (supra), this Court, elaborating on the objects and purpose of the Juvenile Justice Act, made the following observations:—

“...The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded...”

18. In the present case, the appellant has filed an application under Section 391 CrPC, on the basis of Transfer Certificate issued by the Government Upper Primary School, Khanpur (Khandar) District Sawai Madhopur indicating therein that he took admission in Class-I on 13.01.1983 vide Admission No. 290 and his date of birth as mentioned in the school record is 11.01.1977, hence, his age on the date of occurrence i.e. on 02.12.1989 was 12 years and 11 months and for all practical purposes, he was juvenile on the date of offence.





(B) Directions for holding an enquiry to determine the age of the appellant:-

19. Keeping in view the provisions, contained under the JJ Act, 2015, this Court considered it proper on 04.03.2024 to direct the learned Sessions Judge, Sawai Madhopur to conduct an enquiry for determining the age / date of birth of the appellant on the date of occurrence in accordance with the procedure provided under the JJ Act, 2015 and the Rules framed thereunder.

20. Pursuant to the directions issued by this Court on 04.03.2024, the learned Sessions Judge, Sawai Madhopur conducted an enquiry to determine the age / date of birth of the appellant and sent its report dated 30.04.2024 to this Court.

21. Perusal of the report dated 30.04.2024, submitted by the Sessions Judge, shows that an enquiry under Section 9(2) of the JJ Act, 2015 was conducted and the Scholar Register and School Record of the appellant was summoned from the Government Upper Primary School, Khandar, District Sawai Madhopur. The Senior Teacher Shri Bhupendra Kumar appeared with the original record before the Sessions Judge which indicated that the appellant Kailash Chand Gurjar took admission in that school in Class-I on 13.01.1983 at the age of 5 years and 2 months and his date of birth was mentioned as 11.01.1977 in the school record. The appellant remained absence for long time in the school, hence, his name was struck off on 28.09.1984 from the school records.

22. On the basis of documentary evidence of the school records, the age of the appellant was determined as 12 years and 11 months, on the date of occurrence i.e. on 02.12.1989 and after



holding the aforesaid enquiry, the date of birth of the appellant was determined as 11.01.1977.

23. Hence, it is *ipso facto* clear that the appellant was juvenile on the date of occurrence and his age was 12 years and 11 months on 02.12.1989, when the incident of rape occurred.

(C) Whether punishment and sentence be imposed upon Juvenile/Appellant:-

24. The question which remains for consideration of this Court is that what punishment or sentence should be imposed upon the appellant now?

25. In the present case, the appellant was less than 16 years of age i.e. 12 years and 11 months, on the date of occurrence and he has been found guilty for the offence punishable under Section 376 IPC and he has been sentenced to undergo seven years imprisonment. The appellant was granted anticipatory bail during the course of trial, hence, he did not remain in judicial custody even for a day, during the course of investigation and trial and for the first time, he was taken into custody on 31.07.1991 when he was punished vide impugned judgment dated 31.07.1991/ 01.08.1991. Thereafter, his sentence was suspended by this Court vide order dated 22.10.1991. Meaning thereby, he remained in jail w.e.f. 31.07.1991 till 22.10.1991 i.e. for about two months and 22 days and thus the appellant has undergone a sentence of 83 days.

26. Having considered the facts of the case and the findings recorded above, it would be appropriate to briefly deal with the case law on the points as to whether once an accused after conviction, at the stage of appeal, is held to be juvenile/child under



the provisions of JJ Act, 2015 and what would be the status of the conviction and sentence awarded by the Trial Court. Also Whether the trial itself stood vitiated for lack of jurisdiction by Sessions Court and it would be Juvenile Justice Board (JJB) alone which could make inquiry into the offence committed, based upon the evidence led by the prosecution. If the enquiry has not been conducted by JJB, then whether the entire proceedings need to be quashed or only the sentencing aspect would require consideration in accordance with the JJ Act, 2015.

27. This Court may note here at the outset that the appellant has chosen not to challenge the conviction but is only claiming juvenility and consequently the benefit of sentence provided under the JJ Act, 2015.

(D) Legal Analysis on several verdicts on the issue of sentence for Juvenile:-

28. There are 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 and they have been directed to release the accused, after maintaining their conviction.

29. In the case of **Vaneet Kumar Gupta @ Dharminder Vs. State of Punjab 2009** reported in **(17) SCC 587**, the accused, who was sentenced to life under Section 302 read with 149 I.P.C., was found to be a Juvenile, at the time of commission of the offence. The Apex Court noticing the fact that he is in jail for several years, directed his release from jail.





30. In the case of **Bhim @ Uttam Ghosh Vs. State of West Bengal** reported in **2010 (14) SCC 571**, the appellant was sentenced to 5 years rigorous imprisonment. It was established before the Hon'ble Apex Court that on the date of offence, he was a juvenile in conflict with law and he is entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000') and by that time, he has become 42 years old. But, he was in jail for less than 3 years. In the circumstances, the Hon'ble Apex Court did not detain him in jail for the remaining period but directed his release from jail.

31. In the case of **Lakhan Lal Vs. State of Bihar** reported in **2011 (2) SCC 251**, the accused, who was sentenced to life under Section 302 read with 34 I.P.C., was found to be a Juvenile in conflict with law at the time of commission of the offence. By the time his appeal reached to the Hon'ble Supreme Court, he had crossed 40 years of age. He was in jail for more than 7 years. Under these circumstances, referring to **Dharambir Vs. State** reported in **(2010) 2 SCC 344**, the Apex Court set aside his life sentence and directed his release.

32. In the case of **Ram Kumar and Ors. Vs. State of UP**, reported in **2021 SCC OnLine ALL 804**, the Division Bench of Allahabad High Court, in somewhat similar circumstances, partly allowed the criminal appeal filed by the appellant after considering the facts and circumstances of the case, period of imprisonment, age of the accused/appellant, as on date and the efflux of time since the date of occurrence and held that no fruitful purpose would be served by remanding the matter to Juvenile Justice Board as



accused-appellant has already served out more than three years sentence. Moreover, he was aged about 15 years 05 months and 22 days on the day of incident. Therefore, he could not be kept along with other Juveniles in Juvenile Special Home in this age group. Under these circumstances, the Division Bench of the Allahabad High Court modified the sentence and released the appellant on the sentence already undergone by him.

33. In the case of **Jitendra Singh alias Babboo Singh and another vs. State of Uttar Pradesh** reported in **(2013) 11 SCC 193**, the Hon'ble Apex Court confirmed the conviction but as the appellant therein could only be awarded imposition of fine, the existing fine of Rs.100/- was found to be grossly inadequate and accordingly, the matter was remitted to the JJB for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of the victim.

34. The Hon'ble Apex Court in the case of **Mahesh vs. State of Rajasthan and Others** reported in **(2018) SCC Online SC 3655**, confirmed the conviction. However, the sentence imposed was modified to the period undergone. The aforesaid judgment relies upon the law laid down in the case of **Jitendra Singh** (supra). After framing the issue as to whether the validity/correctness of the conviction, recorded by Trial Court, could be maintained, the Hon'ble Apex Court proceeded to give due consideration in paragraph nos. 4, 5 and 6 of the judgment. Thereafter the Hon'ble Apex Court proceeded to consider the merits of the conviction and





upheld the same in paragraph No.7. Paragraph Nos.4 to 7 of the report are reproduced hereunder:

"4. In the aforesaid facts, two questions arise for determination in the present appeals before us. The first is with regard to the validity/correctness of the conviction recorded by the learned trial Court and affirmed by the High Court and, secondly, if the conviction to be maintained what should be the appropriate measure of punishment/sentence and whether the same should be imposed by this Court or the matter be remanded to the Juvenile Justice Board in accordance with the provisions of Section 20 of the Act of 2000.

5. The position in law in this regard is somewhat unsettled as has been noticed and dealt with by this Court in Jitendra Singh alias Babboo Singh and another versus State of Uttar Pradesh wherein in paragraphs 24 to 27 four categories of cases have been culled out where apparently different approaches had been adopted by this Court. The net result is summed up in paragraph 28 of the aforesaid report which explains the details of the categorization made in the earlier paragraphs of the said report. Paragraph 28 of the said report, therefore, would require a specific notice and is reproduced below:

"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.”

6. The validity of the conviction in respect of the incident which occurred almost two decades back, in our considered view, ought to be decided in these appeals and the entire of the proceedings including the punishment/sentence awarded should not be interfered with on the mere ground that the accused appellants were juveniles on the date of commission of the alleged crime. Judicial approaches must always be realistic and have some relation to the ground realities. We, therefore, adopt one of the possible approaches that has been earlier adopted by this Court in the four categories of cases mentioned above to examine the correctness of the conviction of the accused appellants under the provisions of the IPC, as noticed above.

7. In this regard, having perused the materials on record we find no ground whatsoever to take a view different from what has been recorded by the learned trial Court and affirmed by the High Court. The conviction of the accused appellants under Sections 323, 324, 325, 427, 455 read with Section 149 IPC accordingly shall stand affirmed.”

35. In the case of **Satya Deo alias Bhoorey vs. State of Uttar Pradesh** reported in **(2020) 10 SCC 555**, following the ratio and legal position laid down in the case of **Jitendra Singh** (supra), the Hon’ble Supreme Court upheld the conviction and after setting aside the sentence of life imprisonment awarded to the appellant, it was directed that the jail authorities would produce the appellant before the JJB within seven days, and thereafter, the JJB would pass appropriate orders regarding the detention and custody with respect to the appellant therein.

36. There is another reason why a trial conducted and conviction recorded by the Sessions Court would not be held to be vitiated in law even though subsequently the person tried has been held to be a child.





37. 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 JJ Act, 2015 but also under Section 25 of the JJ Act, 2015, 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 JJ Act, 2015, it is clearly provided that any proceeding pending before any Board or Court on the date of commencement of the JJ Act, 2015 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."

38. Having considered the statutory provisions laid down in Section 9 of the 2015 Act and also Section 7A of the Act of 2000 which is identical to Section 9 of the JJ Act, 2015, this Court is 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 JJ Act, 2015 would be attracted and any sentence in excess of what is



permissible under the JJ Act, 2015 will have to be accordingly amended, as per the provisions of the JJ Act, 2015. 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 JJ Act, 2015. The object under the JJ Act, 2015 dealing with the rights and liberties of the juvenile is only to ensure that 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/her stay in any of the institutions defined under the JJ Act, 2015.

Conclusion:-

39. In view of the above discussion and the position of law as laid down by the Hon'ble Apex Court in the cases of **Vaneet Kumar Gupta** (supra), **Bhim @ Uttam Ghosh** (supra) and **Lakhan Lal** (supra), the conviction of the appellant is upheld.

40. Since the appellant at present would be more than 46 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. The sentence imposed vide impugned judgment dated 31.07.1991/01.08.1991 is modified to the period already undergone by the appellant. Since the appellant is on bail, he is not required to surrender. He be released on the sentence already served by him, if not required in any other case.

41. Accordingly, the appeal stands partly allowed.

42. Keeping in view the provision of Section 437-A CrPC, the appellant is directed to furnish personal bond of Rs.1,00,000/- and two surety of Rs.50,000/- each before the trial Court within a



period of one month, which shall remain effective for a period of six months, so that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the appellant on receipt of notice thereof shall appear before the Apex Court.

- 43. Record of the trial Court be sent back forthwith.
- 44. All application(s) (pending, if any) stand(s) disposed of.



(ANOOP KUMAR DHAND),J

MR