IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 475 OF 2009
(ARISING OUT OF S.L.P.(CRL.) NO.4910 OF 2008)

VANEET KUMAR GUPTA @ DHARMINDER ... APPELLANT

VERSUS

STATE OF PUNJAB ... RESPONDENT

ORDER

Leave granted.

Challenge in this appeal is mainly to the award of sentence to the appellant on his conviction for an offence under Section 302 read with Section 149 of the Indian Penal Code, 1860. On conviction, the Sessions Judge sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.2,000/- with the default stipulation. By the impugned order, the High Court has affirmed the decision of the Trial Court.

Since in this appeal we propose to deal only with the legal proposition urged on behalf of the appellant, we deem it unnecessary to state, in detail, the case of the prosecution against the appellant which resulted in his conviction. It would suffice to note that the incident in which the appellant is stated to have participated, took place on 28th August, 2002.

Learned counsel appearing on behalf of the appellant has challenged the conviction of the appellant mainly on the ground that on the date of occurrence, the appellant was a juvenile and therefore, he should have been tried under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the Juvenile Justice Act" for short). Although it is conceded by learned counsel for the appellant that this point was not specifically raised either before the Trial Court or the High Court but he submits that in the light of the provision contained in Section 7A of the Juvenile Justice Act, the question about juvenility of the appellant can be gone into even at this stage. Learned counsel has also pointed out that in fact the High Court was aware of the fact that the appellant had not completed eighteen years of age as on the date of alleged commission of offence and was, thus, a "juvenile" inasmuch as the fact of his being confined in Borstal Jail, Ludhiana, meant for housing a juvenile in conflict with law was mentioned in the application filed for grant of bail. It was, therefore, obligatory for the High Court to hold an inquiry itself for determination of the question of age of the appellant or cause an inquiry to be conducted and seek a report regarding the same.

Having bestowed our anxious consideration to the facts before us, we are of the opinion that the appeal commends acceptance.

Section 7A, inserted in the Juvenile Justice Act with effect from 22nd August, 2006 reads as follows:

> **"7A.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 inquiry, 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect."**

It is manifest from a fair reading of proviso to sub-section (1) that a claim of juvenility can be raised at any stage and even after the final disposal of the case. In that view of the matter, the appellant is entitled to raise before us claim of juvenility at the relevant time. It

appears to us that in view of a recent decision of a three Judge Bench of this Court in Pawan Vs. State of Uttaranchal JT (2009) 3 SC 87, the issue is no longer *res-integra*. In the said decision, taking note of the observations in the case of Gurpreet Singh Vs. State of Punjab (2005) 12 SCC 615, wherein entertaining the issue whether the accused was a juvenile under the Juvenile Justice Act, 1986, raised for the first time before it, this Court, had laid down the procedure to be followed in such a situation, one of us, R.M. Lodha, J., speaking for the Court has observed thus:

> **"Where the materials placed before this Court by the accused, prima facie, suggest that the accused was `juvenile' as defined in the Act, 2000 on the date of incident, it may be necessary to call for the report or an enquiry be ordered to be made. However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, we do not think any further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate and satisfactory material that the accused had not attained age of eighteen years on the date of commission of offence; sans such material any further enquiry into juvenility would be unnecessary". (Emphasis supplied by us)**

Thus, the short question for consideration is as to whether adequate material is available on record to hold that the appellant had not attained age of eighteen years on the date of commission of offence and could, thus, be

treated as a "juvenile" within the meaning of Section 2(k) of the Juvenile Justice Act?

When the matter came up for hearing on 15th December, 2008, counsel for the State was asked to seek instructions as to whether any inquiry had been conducted with regard to the age of the appellant as on the date of the commission of the offence, particularly in the light of the school register and Transfer Certificate issued by Rama Montessori Junior Basic Vidayalaya Samiti, Nawabganj, Gonda (U.P.). Pursuant to and in furtherance of the said order, an affidavit has been filed by the Deputy Superintendent of Police, Garhshankar, District Hoshiarpur. In the said affidavit, it is stated that upon making inquiries from the Principal of the aforementioned School, Certificate dated 15th December, 1987 has been found to be genuine. It is further stated that as per the inquiries made, the appellant had studied in the said School from Class I to V during the period 1994-1999 and as per the school records, his date of birth is 15th December, 1987. Thus, in view of the said report, filed on affidavit, which is not questioned by learned counsel for the State, the age of the appellant as on the date of occurrence was about 15 years.

The inquiry report, which inspires confidence, unquestionably establishes that as on the date of occurrence, the appellant was below the age of eighteen

years; was thus, a "juvenile" in terms of the Juvenile Justice Act and cannot be denied the benefit of the provisions of the said Act. Therefore, having been found to have committed the aforementioned offence, for the purpose of sentencing, he has to be dealt with in accordance with the provisions contained in Section 15 thereof. As per clause (g) of sub-section (1) of Section 15 of the Juvenile Justice Act, the maximum period for which the appellant could be sent to a special home is a period of three years.

Under the given circumstances, the question is what relief should be granted to the appellant at this juncture. Indisputably, the appellant has been in prison for the last many years and, therefore, at this distant time, it will neither be desirable nor proper to refer him to the Juvenile Justice Board. Accordingly, we follow the course adopted in Bhola Bhagat Vs. State of Bihar (1997) 8 SCC 720; sustain the conviction of the appellant for the offence for which he has been found guilty by the Sessions Court, as affirmed by the High Court and at the same time quash the sentence awarded to him.

Resultantly, the appeal is partly allowed to the extent indicated above. We direct that the appellant shall be released forthwith, if not required in any other case.

.....J.
[D.K. JAIN]

.....J.
[R.M. LODHA]

NEW DELHI,
MARCH 6, 2009.

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VERSUS

STATE OF PUNJAB ... RESPONDENT

ORDER

It has now been brought to our notice that vide order dated February 09, 2009, it was directed that the appellant shall be released on bail on his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the trial Court. In view of the said order, we direct that if the appellant has already furnished personal bond and a surety in terms of the said order, the same shall stand discharged.

.....J.
[D.K. JAIN]

.....J.
[R.M. LODHA]

NEW DELHI,
MARCH 19, 2009.