
(2007) 02 GUJ CK 0068
In the Gujarat High Court
Case No : Criminal Appeal No. 1463 of 2005

Amarsinh @ Dipsinh Sursinh Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 374(2), 391
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 14, 16, 17, 18, 2
Penal Code, 1860 (IPC) — Section 114, 302, 304, 306, 498A

Citation : (2007) 3 GLR 2336

Hon'ble Judges : K.A. Puj, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Sunil S. Joshi, for the Appellant; K.T. Dave, Additional Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The appellant - original accused No. 1 has filed this appeal u/s 374(2) of the Criminal Procedure Code, 1973 (for short "the Code") challenging the order dated 30.4.2005 passed by the learned Additional Sessions Judge, 6th Fast Track Court, Panchmahal at Godhra in Sessions Case No. 320 of 2004 convicting him for the offence punishable u/s 304 Part-I of IPC and sentencing him for R.I of 10 years with fine of Rs. 1 lac (Rupees One Lac Only) and, in default of payment of fine further S.I of 3 months.

2. This appeal was admitted on 17.8.2005 and Court directed the learned Counsel appearing for the appellant - original accused to prepare and produce paper book containing depositions of all witnesses and documents produced before the trial Court. The Court has also directed the registry to notify the appeal for final hearing in the week commencing from 12.9.2005.

3. Briefly stated, the prosecution case as disclosed from the complaint as well as unfolded during trial, is as under:

4. The complainant, Bharatsinh Balwantsinh Patel, in his complaint has stated that his sister, namely, Manjulaben's marriage was solemnized with Amarsinh Sursinh Patel and after her marriage she was residing with her husband at village Saliya alongwith other family members of her husband. On receiving the message to the effect that the said Manjulaben has passed away on 3.7.2004, the complainant and other family members had gone to village Saliya and inquired about the death of Manjulaben. It is alleged in the complaint that the present appellant - original accused No. 1 and other two accused, father and mother of the present appellant - original accused No. 1, informed them that deceased Manjulaben had developed diarrhoea and on the way to hospital, she had passed away. It is further alleged that since the complainant had raised a suspicion in respect of death of his sister, the complainant had given an application dated 3.7.2004 before the Morva Police Station and the same was registered as Accident Death Entry No. 18 of 2004 and thereafter inquiry u/s 174 of the Criminal Procedure Code was made.

5. Thereafter, in the course of inquiry it appears that the brother of the deceased lodged a FIR with the Dy.S.P. Godhra on 10.7.2004 alleging that the husband, the father-in-law and mother-in-law had abetted the commission of suicide to the deceased Manjulaben. It was further alleged in the said FIR that since the deceased was not carrying child, the accused persons used to harass her mentally as well as physically and it is further alleged that on account of the said harassment, the said Manjulaben has committed suicide by consuming poisonous medicine. Thereafter, the offence under Sections 306, 498A and 114 of the IPC was registered against the appellant - original accused No. 1 and other two accused by the Morva Police vide CR No. I-97 of 2004. Thereafter, further investigation revealed that the deceased died of rupture of spleen so offence u/s 306 came to be deleted and offence u/s 302 was added. Since sufficient incriminating evidence was found against the appellant - original accused No. 1 and other two accused for commission of the offence punishable under Sections 302, 498A and 114 of the IPC, a charge-sheet was filed against them in the Court of learned Chief Judicial Magistrate, Godhra.

6. As the offence u/s 302 of IPC is exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Godhra committed the case to the Sessions Court, Panchmahal at Godhra.

7. The learned Additional Sessions Judge, 6th Fast Track Court, Panchmahal at Godhra to whom the case was made over for trial, framed charge against the appellant - original accused No. 1 and other two accused for commission of the offence punishable under Sections 302, 498A and 114 of the IPC. The charge was read over and explained to the accused. As the accused pleaded not guilty to the charge and claimed to be tried, they were put to trial by the learned Additional Sessions Judge, 6th Fast Track Court, Panchmahal at Godhra in Sessions Case No. 320 of 2004.

8. In order to bring home the charge levelled against the accused, the

prosecution has, in all, examined as many as 19 witnesses, the details of which have been given in paragraph 3 of the impugned judgment and order, which are as under:

Sr. No. Particulars Exh. No.

1 P.W No. 1 - Dr. Anil. 10 2 P.W No. 2 - Laxmansinh - Panch witness. 23 3 P.W No. 3 - Parsingbhai - Panch witness. 24 4 P.W No. 4 - Ranjansinh - Panch witness. 26 5 P.W No. 5 - Kesarsinh. 28 6 P.W No. 6 - Shankarbhai. 29 7 P.W No. 7 - Bharatsinh - complainant. 31 8 P.W No. 8 - Kiritkumar - Panch witness. 32 9 P.W No. 9 - Nandaben - Panch witness. 33 10 P.W. No. 10 - Lilaben. 34 11 P.W. No. 11 - Shaileshbhai. 35 12 P.W. No. 12 - Parvatsinh. 36 13 P.W. No. 13 - Kamlaben. 37 14 P.W. No. 14 - ASI - Ranjansinh. 39 15 P.W. No. 15 - Gunvantsinh - Police Constable. 41 16 P.W. No. 16 - Rameshbhai - PSO. 47 17 P.W. No. 17 - Dhamendrasinh - PSI 48 18 P.W. No. 18 - Dharmendrasinh - Divisions Superintendent of Police. 49 19 P.W. No. 19 - Babubhai - PSI. 55

9. To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in paragraph-3 of the impugned judgment and order, are as under:

Sr.No. Particulars Exh.No.

1 P.M. Note. 11 2 Police Yadi. 12 3 After death form. 13 4 Receipt for handing over dead body. 14 5 Certificate for cause of death. 16 6 Inquest Panchnama of dead body. 19 7 Ravangi Nondh. 20 8 FSL Report. 21 9 Panchnama of scene of offence. 25 10 Panchnama u/s 27 of Evidence Act. 27 11 Map of place of offence. 45 12 Original complaint of CR No. 97/2000. 50 13 Original Complaint. 51 14 Mark - B Opinion letter of Medical Officer.

10. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements, as required u/s 313 of the Code. In their further statements, the accused denied the case of the prosecution in its entirety. However, they did not lead any evidence nor did they examine any witness in support of their defence.

11. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Additional Sessions Judge, Panchmahal at Godhra has held that the appellant - original accused No. 1 has committed offence u/s 304 Part-I of IPC and the prosecution has been able to establish that the complicity of accused for commission of the offences with which he was charged, has been proved beyond reasonable doubt, and therefore, he recorded the order of conviction and sentence against him to which reference is made in earlier paragraph of this judgment, giving rise to the instant appeal at the behest of the appellant-original accused No. 1.

12. In the appeal filed before this Court by the appellant - original accused No. 1

it was contended that the impugned order is illegal, unjust, improper and against the weight of evidence on record and, therefore, the same deserves to be quashed and set aside. It is further contended that the learned Additional Sessions Judge has materially erred in holding that the death of the deceased Manjulaben was a homicidal death. It was further contended that there was no evidence on record whereby it can be said that the death was homicidal one. It is further contended that the cause of death of the deceased was the shock due to profuse bleeding on account of the rupture of spleen. The said injury on the spleen was not established to have been caused by any of the accused persons and, therefore, the same could not have been described as the homicidal death. It has also been contended that the learned Additional Sessions Judge, Panchamaharaj at Godhra has erred in relying upon the oral testimony of the complainant recorded at Ex.31 in coming to the conclusion that the accused persons used to harass deceased mentally and physically and the husband of the deceased, the appellant - original accused No. 1 used to beat the deceased. It is further contended that bare reading of FIR shows that the complainant had categorically stated that the deceased had never complained any harassment being meted out to her by the appellant - original accused No. 1 and others. It is further contended that the deposition of the complainant is having contradictions / omissions vis-a-vis the FIR on the aspect of alleged harassment. It is further contended that the learned Additional Sessions Judge has grossly erred in holding that on 3.7.2004, at 3:30 hours the appellant has caused death of the deceased - Manjulaben by giving kicks to her. According to the case of the prosecution, the appellant - original accused No. 1 used to harass the deceased mentally as well as physically, but the learned Additional Sessions Judge has observed that the evidence with regard to the so called harassment is all hearsay evidence. The first informant had given report of accident in the first instance Ex.14, wherein the first informant had not stated anything regarding the so called harassment. So the learned Additional Sessions Judge has observed that there is a contradiction on the allegation of the harassment between the deposition of the first informant and Ex.40, first disclosure of the offence. Ultimately, the learned Additional Sessions Judge in para-21 of the impugned order has clearly held that the prosecution had failed to prove the allegations of harassment being meted out to the deceased by the appellant - original accused No. 1 and other accused persons. It is further contended that the learned Additional Sessions Judge has grossly erred in holding that in view of the external injuries recorded in the inquest panchnama and the external and internal injuries described by the doctor, there is no reason to disbelieve that the appellant - original accused No. 1 has not caused said injuries by kicking the deceased. The injuries found on the body of the deceased per se would not lead to any conclusion unless there is any evidence on record that the said injuries are caused by the appellant - original accused No. 1. It is further contended that no circumstantial evidence has been brought on record by the prosecution on the strength of which it can lead to the only conclusion of guilt of the appellant - original accused No. 1. On the contrary, the so called harassment being meted

out to the deceased is itself not proved by the prosecution and in that case, in the absence of any motive, the conclusion that the appellant committed the said offence is completely ill founded and based only on conjectures and surmises.

13. It is further contended in the appeal memo that the learned Additional Sessions Judge has failed to appreciate that so far as the conviction based upon the circumstantial evidence is concerned, the chain of the incriminating circumstances must be so complete that the innocence of the accused is incompatible with the same and the same should lead only to the guilt of the accused. So far as the alleged incriminating circumstances are concerned, the prosecution had alleged that the appellant - original accused No. 1 and other accused were ill treating the deceased on account of her not carrying any child, secondly in the course of the said ill treatment, the appellant on 3.7.2004, at 3:00 hours quarreled with the deceased and made her fall on the earth by holding her from the neck and, thereafter, beating her with the kick on her stomach and thirdly that the death occurred at the place of the appellant - original accused No. 1. The learned Additional Sessions Judge has categorically found that the prosecution has failed to prove its case so far as the alleged ill-treatment is concerned. Moreover, the allegation of beating the deceased on the day of incidence is also not proved by any mode of evidence by the prosecution. So the prosecution has completely failed in proving the alleged incriminating circumstances / links from which the principal fact can be proved and, therefore, the impugned order deserves to be quashed and set aside.

14. An alternative plea is also raised in the appeal memo that without prejudice to the aforesaid grounds and contentions and assuming without admitting that the appellant - original accused No. 1 had committed the said offence than in that case it was contended that in any view of the matter, the appellant - original accused No. 1 should not have been convicted for the offence u/s 304 Part-I in as much as looking to the evidence of the doctor Ex.10, the cause of death of the deceased is only due to injury on her spleen if the same is enlarged / inflated. It is not the case of the prosecution that the appellant had the knowledge that the deceased had enlarged spleen and in that view of the matter, it is contended that the appellant was liable only for the offence u/s 323 for causing hurt.

15. The appellant - original accused No. 1 has also raised the plea in the appeal memo that the date of the birth of the appellant - original accused No. 1 is 21.8.1987. The date of occurrence of the event is 3.7.2004. Therefore, on the date of the incident, the appellant - original accused No. 1 was aged 17 years and 1 month. Section 2(k) of the Juvenile Justice Act, 2000, defining the word juvenile. The appellant - original accused No. 1 being a boy, who had not attained the age of 18 years, was juvenile when the said offence was allegedly committed by him. Neither the appellant - original accused No. 1 nor his father were aware about the legal position that only, the juvenile Court established under the aforesaid Act has the jurisdiction and competent to try the juvenile delinquent and the said Act provides for complete special machinery to try the

juvenile offenders. In that view of the matter, it was contended that the impugned order deserves to be quashed and set aside.

16. Pursuant to the order passed by the Court on 17.8.2005 while admitting the appeal, the appeal was listed before this Court for final hearing on 21.9.2006 alongwith the Criminal Misc. Application No. 9251 of 2005 preferred by the appellant - original accused No. 1 seeking permission of this Court to produce the documentary evidence in the form of School Leaving Certificate and Birth Certificate of the appellant - original accused No. 1 and to raise the necessary plea of the appellant being juvenile in the main appeal. This Court has disposed of the said application on 21.9.2006 and granted permission to the appellant - original accused No. 1 to produce these two documents on record. This Court has also directed the appellant - original accused No. 1 to make necessary amendment in the memo of appeal by incorporating these two documents. In the main appeal, the Court has granted leave to the appellant - original accused No. 1 to correct the age of the appellant in para-6(k) of the appeal memo by mentioning 16 years, 10 months and 16 days in place of 17 years and 1 month.

17. At the time of hearing of this appeal on 21.9.2006 Mr. Sunil S. Joshi, learned advocate appearing for the appellant - original accused No. 1 has submitted that the appellant - original accused No. 1 was juvenile at the time when the offence was committed and he ought to have been tried in accordance with the provisions of the Juvenile Justice (Care & Protection of Children) Act, 2000. According to him, this fact was never noticed at the time of trial by all concerned and it came to light only after the trial was over and the judgment was pronounced. These facts have therefore, brought to the notice of this Court by raising necessary ground in the appeal memo. In support of this ground, the appellant - original accused No. 1 has obtained School Leaving Certificate as well as Birth Certificate from the village panchayat. Both these certificates were taken on record. In view of the provisions contained in Section 391 of the Code of Criminal Procedure and in view of the decision of the Hon'ble Supreme Court rendered in the case of Gopinath Ghosh Vs. The State of West Bengal, this Court was of the view that the issue raised by the appellant - original accused No. 1 in the present appeal was not raised before the Trial Court and the Trial Court had no occasion to deal with the said issue. The evidence produced before this Court was also required to be proved and hence, this Court directed vide its order dated 10.10.2006 to the learned Additional Sessions Judge, 6th Fast Track Court, Panchmahal at Godhra to decide the following issue in Sessions Case No. 320 of 2004.

What was the age of the accused - AMARSINH @ DIPSINH SURSINH PATEL on the date of offence for which he was tried and convicted.

18. Since this Court remitted this issue to the Learned Trial Judge for his determination, this Court directed him to give opportunity to both the sides to lead oral as well as documentary evidence to enable the trial Court to reach proper and correct conclusion. The Learned Trial Judge is also given liberty to

send the appellant - original accused No. 1 to the Chief Medical Officer for carrying out ossification test. The Learned Trial Judge was also directed to determine the above issue within three months from the date of receipt of the writ from this Court or from the date of receipt of certified copy of this order, whichever was earlier. The registry was also directed to send the Records and Proceedings of Sessions Case No. 320 of 2004 to the learned Additional Sessions Judge, 6th Fast Track Court, Panchmahal at Godhra and appeal was ordered to be listed for final hearing after 3 months.

19. Pursuant to the aforesaid order passed by this Court on 10.10.2006 the learned Additional Sessions Judge, Panchmahal at Godhra has conducted fresh trial and recorded the following evidence:

- (1) Sursinh Chemabhai - Ex.66
- (2) Ratnabhai Mulabhai Vankar - Ex.69
- (3) Minakshiben Dalptsinh Bariya - Ex.73
- (4) Dipsinh Sursing Patel - Ex.76
- (5) Bharatsinh Balwant at Ex.78.
- (6) Dharmendrasinh Jashvantsinh Chavda at Ex.80.
- (7) Babubhai Kanubhai Pandor at Ex.81.

20. The learned Additional Sessions Judge has also collected the following documentary evidence:

- (1) Birth Certificate - Ex.70
- (2) Extract from the Birth and Death Register maintained by the Village Panchayat for the year 1987 - Ex.71
- (3) Extract from Page-16 of the general register of Sant Road Primary School - Ex.74.
- (4) School Leaving Certificate of appellant - original accused No. 1 - Ex.75.

21. After considering the aforesaid oral as well as documentary evidence and after giving an opportunity of being heard to both the parties the learned Additional Sessions Judge, Panchmahal at Godhra vide his order dated 18.1.2007 has come to the conclusion that the age of the appellant - original accused No. 1 on the date of commission of the offence is 16 years, 10 months and 12 days. The learned Additional Sessions Judge, Panchmahal at Godhra has forwarded this additional record and proceedings to this Court on 27.1.2007.

22. In view of the further order passed by the learned Additional Sessions Judge, Panchmahal at Godhra on 28.1.2007, Mr.Sunil Joshi, learned advocate appearing for the appellant has submitted that since the appellant - accused was juvenile on the date of commission of the offence, the Sessions Court has no jurisdiction

to convict the appellant - original accused and to sentence him for the RI of 10 years. The impugned order is, therefore, absolutely illegal, without jurisdiction and therefore it deserves to be quashed and set aside. He, however, made it clear that he does not invite any order on the appellant's challenge to the conviction u/s 304 Part-I of IPC and restricts his challenge only to the sentence imposed on the appellant.

23. In support of his submissions, he relies on the following decisions:

- (i) Gopinath Ghosh Vs. The State of West Bengal,
- (ii) Jyoti Sankar Tripathy Vs. The State,
- (iii) Bhola Bhagat Vs. State of Bihar,
- (iv) Nanlabhai Kukabhai Rathwa v. State of Gujarat 2005(1) GLH 611.
- (v) Upendra Kumar v. State of Bihar 2005 SCC 778.
- (vi) Gurpreet Singh Vs. State of Punjab,

24. Mr. K.T. Dave, learned Additional Public Prosecutor, appearing for the respondent - State of Gujarat on the other hand has submitted that the plea regarding appellant - accused being juvenile on the date of occurrence of the offence was raised for the first time before this Court and the entire trial was proceeded on the footing that the appellant - accused was of 22 years old on the date of occurrence of the event. The whole exercise of remitting the matter to the trial Court and the fresh trial conducted by the learned Additional Sessions Judge, Panchmahal at Godhra pursuant to the direction of this Court and the fresh order passed by him is of no consequence. The appellant - accused is rightly convicted and sentenced by the learned Additional Sessions Judge, Panchmahal at Godhra and no interference is called for by entertaining this additional plea raised by Mr.Joshi, learned advocate appearing for the appellant - original accused for the first time before this Court. He has further submitted that despite the discretion given by this Court to the learned Additional Sessions Judge, Panchmahal at Godhra to carry out the ossification test of the appellant - original accused, he has not carried out such ossification test and, therefore, the fresh trial conducted by him has not conclusively established that the appellant - original accused was juvenile on the date of the occurrence of the event. He has, therefore, submitted that the appreciation of additional evidence made by the learned Additional Sessions Judge, Panchmahal at Godhra while conducting the fresh trial should be ignored and the order of conviction and sentence passed by him earlier should be upheld.

25. This Court has considered the submissions advanced by the learned advocates appearing for the respective parties and perused the impugned judgment and order as well as fresh order passed by the learned Additional Sessions Judge, Panchmahal at Godhra pursuant to the direction issued by this Court. This Court has undertaken a complete and comprehensive appreciation of

all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Additional Sessions Judge, Panchmahal at Godhra and considered the arguments advanced on behalf of the appellant - accused and infirmities pressed, scrupulously with a view to find out as to whether the learned Additional Sessions Judge, Panchmahal at Godhra has rightly come to the conclusion that the appellant - original accused was juvenile on the date of occurrence of the event.

26. To prove the fact that the appellant - original accused was juvenile on the date of the occurrence of the offence, the learned Additional Sessions Judge has recorded the oral evidence of Sursinh Chemabhai at Ex.66. He testified in his deposition that the appellant - original accused was borne on 21.8.1987. His birth was registered with Talati-cum-Mantri, Saliya and hence on the date of occurrence of the offence the appellant - original accused was below the age of 18 years. The learned Additional Sessions Judge has also examined Ratnabhai Mulabhai Vankar at Ex.69. He is Talati-cum-Mantri of village Saliya. He has brought with him the Birth and Death register and at Serial No. 200 of the said register the birth of the appellant - original accused was registered. The said registration entry was made on 29.8.1987. A xerox copy of the said page of the register was also taken on record at Ex.71 and the birth date certificate issued by him was taken on record at Ex-70. This witness has also deposed that these Ex.70 and 71 do not seem to be concocted or false one and the necessary entries were made in the normal course of maintaining the record. The learned Additional Sessions Judge has also examined Minakshiben Dalptsinh Bariya at Ex.73. She is the principal of the school. She has brought alongwith her the Register No. 7 and on page-16 of the said register at entry No. 4315, the birth date of the appellant - original accused is recorded i.e. 21.8.1987. The appellant - original accused has left the school on 21.6.2000. The xerox copy of page No. 16 was taken on record at Ex.74. A school leaving certificate issued on the basis of the said register was taken on record at Ex.75. The learned Additional Sessions Judge, Panchmahal at Godhra has also examined the appellant - accused at Ex.76. He has deposed in his deposition that at the time of his arrest, the police has asked his name and address, however he was not asked anything about his age. He came to know recently that his birth date was 21.8.1987. The learned Additional Sessions Judge has also examined Bharatsinh Balwant at Ex.78. He has deposed that during the course of original trial the Court has asked him to produce the necessary certificate with regard to the age of the appellant - accused, however, it was not available at that time and hence it was not produced. The Court has also examined Dharmendrasinh Jashvantsinh Chavda at Ex.80. At the time of occurrence of event he was PSI. He has deposed that age of 22 years mentioned as per the say of the appellant - accused and also looking to his body structure. The other prosecution witness - Babubhai Kanubhai Pandor at Ex.81 has deposed that at the time of the arrest of the

appellant - accused his age was mentioned 22 years and hence at the time of filing charge-sheet the age was mentioned as 22 years. He has also admitted that no documentary evidence was collected at the time of filing of the charge-sheet.

27. In view of the aforesaid oral as well as documentary evidence, there is no dispute that the appellant - accused was juvenile on the date of occurrence of the event. Therefore it is duly proved that the appellant - original accused is juvenile and the learned Additional Sessions Judge, has rightly held that the appellant - original accused was a juvenile on the date of occurrence of the event. We therefore confirm the said finding of the learned Additional Sessions Judge, Panchmahal at Godhra.

28. Having held that the appellant - original accused was juvenile on the date of occurrence of the event, the next question which calls for determination is as to what is the effect of this finding on the original order of conviction and sentence imposed on the appellant - original accused.

29. In this connection, it would be appropriate to have a close look at the relevant statutory provisions contained in the Juvenile justice (Care and Protection of Children) Act, 2000. For the avowed object of providing the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of delinquent juveniles, the Juvenile Justice Act, 1986 was enacted by Parliament. Thereafter, Parliament has thought it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments, the present Act was enacted by the Parliament. Section-2(k) defines Sjuvenile or Schild means a person who has not completed eighteenth year of age. Section-4 of the Act discusses about the Juvenile Justice Board, which carves out an exception and states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act. Section-10 of the Act talks about apprehension of juvenile in conflict with law, which says that as soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. Section-14 of the Act empowers the Juvenile Justice Board to make inquiry regarding juvenile. It says that where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in

relation to the juvenile as it deems fit. Section-16 of the Act however mandates that certain orders cannot be passed against juvenile. It says that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. Section-17 of the Act clearly stipulates that a proceeding under Chapter-VIII of the Code of Criminal Procedure is not competent against juvenile. Section-18 of the Act forbids any joint proceeding of juvenile and person not a juvenile.

30. The above provisions of the Act have come up for consideration before this Court as well as before the Hon'ble Supreme Court. It is advantageous to refer to some of the decisions for the purpose of arriving at just and proper conclusion in this matter.

31. In the case of Jyoti Sankar Tripathy v. State (Supra) the Orissa High Court has referred to the decisions of the Hon'ble Supreme Court in the case of Gopinath Ghosh v. The State of West Bengal (Supra) and observed that the Hon'ble Supreme Court had the occasion to consider the provisions of the West Bengal Children Act which also contained provisions similar to Section-24 of the Act. In that case, a minor was tried alongwith others for committing the offence of murder and was convicted. In view of the clear bar contained in the West Bengal Children Act, the Court ruled that the entire trial of the child was without jurisdiction and was vitiated. Following this judgment the Orissa High Court has held that the finding of the learned Sessions Judge being that the age of the appellant was below 16 years on the date of occurrence and in view of the clear prohibition contained in Section-24 of the Act, trial of the appellant leading to his conviction by the learned Sessions Judge has to be held to be without jurisdiction. The Court further held that the entire trial of the appellant is without jurisdiction and the conviction and sentence of the appellant was therefore set aside. The Court has also considered the question as to what should be the sequel to its finding. The Court further observed that the occurrence had taken place about 5 years back. The victim was aged 13 years at the time of the occurrence and with the passage of time she might have forgotten the trauma of the incident and at that stage to commence the trial afresh in the Court of Sessions and to revive in her the fading memory was neither expedient nor desirable in the interest of justice. The matter was therefore ordered to be closed.

32. In the case of Bhola Bhagat v. State of Bihar (Supra) wherein it is held that when a plea is raised on behalf of an accused that he was a child within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the

Court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The Court must hold an enquiry and return a finding regarding the age, one way or the other. The Court further held that the High Courts and the subordinate courts are expected to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the efforts of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The Court further observed that the High Courts may issue administrative directions to the subordinate courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the accused concerned and then deal with the case in the manner provided by law.

33. In the case of *Nanlabhai Kukabhai Rathwa v. State of Gujarat* (Supra), the Division Bench of this Court has held that the entire trial that was conducted before the learned Additional Judge and Fast Track Court Judge at Chhota Udepur gets vitiated, being without jurisdiction and authority of law. The Court further observed that the order of conviction and sentence passed by the said Judge at the conclusion of the trial cannot stand as they also fall alongwith the trial. While quashing the conviction and sentence the Court has also addressed to the question as to what course to be adopted. The Court therefore directed that the Trial Court shall forthwith make arrangement to get the appellant released from the Central Prison, Vadodara and to produce him before the concerned Board with the accusation of having committed the offence to enable the Board to take further action in accordance with the provisions of the Act.

34. In the case of *Upendra Kumar v. State of Bihar* (Supra), the Hon''ble Supreme Court has held that the course this Court adopted in *Gopinath Ghosh* case as also in *Bhola Bhagat* case was to sustain the conviction but, at the same time, quash the sentence awarded to the convict. The Court further held that in the present case, at this distant time, the question of referring the appellant to the Juvenile Board does not arise. Following the aforesaid decision, the Court has sustained the conviction of the appellant for the offences for which he has been found guilty by the Court of Sessions, as affirmed by the High Court, at the same time, however, the sentence awarded to the appellant was quashed and the appeal was allowed to the said extent. Resultantly, the appellant was directed to be released forthwith if not required in any other case.

35. In the case of *Gurpreet Singh v. State of Punjab* (Supra), the Hon''ble Supreme Court has held that it is well settled that on the date of occurrence of the events if the convict prisoner is juvenile and if that point is not raised either before the trial Court or before the High Court, in such a eventuality this Court should first consider the legality or otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial Court on

the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of the occurrence, he was juvenile but on the date this Court is passing final order upon the report received from the trial Court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside.

36. Following the above referred statutory provisions and the judicial pronouncements made by this Court and other Courts as well as by the Hon''ble Supreme Court and in view of specific finding of the learned Additional Sessions Judge, Panchmahal at Godhra that the appellant - original accused was juvenile on the date of the occurrence of the event, we are of the view that the impugned order and judgment passed by the the learned Additional Sessions Judge, Panchmahal at Godhra on 30.4.2005 convicting the appellant - original accused for an offence punishable u/s 304 of IPC and sentencing him for RI of 10 years with fine of Rs. 1,000/- and in default thereof to undergo the further sentence of SI of 3 months is without jurisdiction and deserves to be quashed and set aside. However, since the challenge to the order of conviction being not pressed and following the judgment of the Hon''ble Supreme Court in the case of Upendra Kumar v. State of Bihar, despite sustaining the conviction, we quash the sentence awarded to the appellant - original accused. Since the appellant - original accused is major as on this date, there is no question of referring the appellant - accused to Juvenile Board. We, therefore, while sustaining the conviction of the appellant - original accused for the offence for which he has been found guilty by the learned Additional Sessions Judge, Panchmahal at Godhra, the sentence awarded by him to the appellant - original accused is quashed and set aside and the present appeal is allowed to this extent. Resultantly the appellant - original accused is directed to be released forthwith if not required in any other case.

37. The appeal is accordingly allowed to the aforesaid extent.