
(2018) 10 P&H CK 0265

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal (S) No. No.1282SB Of 2003 (O&M)

Maninder Singh

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 201, 460
Code of Criminal Procedure, 1973 — Section 313
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2(k), 2(l), 7A, 15, 20, 49, 49(1), 49(2), 64
Juvenile Justice (Care and Protection of Children) Rule, 2007 — Rule 12, 12(3)(a)(i), 12(3)(a)(ii), 12(3)(a)(iii), 12(3), 19, 98

Citation : (2018) 10 P&H CK 0265

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : S. K. Sandhir, M. S. Nagra

Final Decision : Disposed off

Judgement

Arvind Singh Sangwan J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 14.02.2003 vide which the appellant â?" Maninder Singh was

held guilty for an offence punishable under Sections 460 and 201 of the Indian Penal Code, 1860 (in short 'IPC') and was sentenced to undergo

rigorous imprisonment for a period 10 years under Section 460 IPC with a fine of Rs.2,000/- and rigorous imprisonment for a period of 02 years under

Section 201 IPC and to pay a fine of Rs.1,000/- and in case of default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Brief facts of the case are that Avinash Chander, brother of the deceased Dr. Ram

Kumar lodged a complaint with the Police Station Tanda alleging that on 12.09.1999 at about 05:00 pm, he received a telephonic message at Hoshiarpur that his brother Dr. Ram Kumar Bhatara who was residing at village Rajpur Gahot and his servant Maninder @ Bhaiya were missing from the house. On receipt of the said information, he along with N.D. Bhatara came to village Rajpur Gaot and enquired about their brother from the villagers and they came to know that Kuldeep Rai @ Kala and Maninder @ Bhaiya were seen at about 03:00 pm leaving the village on kinetic honda motorcycle of the deceased. Kharak Singh told them that Maninder had told him that deceased had gone to America in the morning. The complainant also searched for Dr. Ram Kumar in the Kothi but his brother was not found. The articles lying in the almirah were found scattered and it appeared that some persons had also searched the articles lying in the house. The complainant suspected that Maninder and Kuldeep Rai have murdered Dr. Ram Kumar on the intervening night i.e. on 11/12.09.1999 and have concealed his dead body and they have done so with the intention to commit theft in the house of the deceased. On the statement of Avinash Chander, Inspector Jaswant Singh got registered a case under Section 460 and 201 IPC, who conducted the investigation and also got recorded the statement of witnesses. Inspector Jaswant Singh also called the finger print expert and dog squad and also prepared rough site plan. Thereafter, on search of the house, the dead body of Dr. Ram Kumar was seen underneath the heap of fire wood. Inquest report was prepared and the dead body was forwarded for post-mortem examination. From the search of room of Maninder, blood stained khes and pair of chappal as well as clothes of deceased, were taken into possession. On 14.09.1999 Prabh Dyal, SI PTC, Phillaur had taken the photographs of the finger prints from the almirah and gave his report. On 16.09.1999, both the accused were arrested and Kuldeep Rai made disclosure statement that he had kept concealed gold chain, 04 gold bangles and Rs.40,000/- in cash in a trunk lying in the store of his house and he offered to get the same recovered and then, he got recovered the aforesaid articles, which were identified by Smt. Raj Bhatara wife of deceased. From the personal search of Kuldeep Rai Rs.1209/- were also recovered along with challan chit of kinetic honda motorcycle. Site plan of the place of recovery was prepared. On the same day, Maninder was also

interrogated and he disclosed that he had kept concealed a dater in the heap of fuel wood lying in the kitchen of the doctor and he got the same

recovered. Thereafter, on completion of the investigation, challan was presented before the trial Court and the accused were charge-sheeted for an

offence punishable under Sections 460 and 201 IPC, to which they pleaded not guilty and claimed trial.

Thereafter, the prosecution in order to prove its case examined PW1 â?" Manjinder Singh PSC, PW2 â?" Bakshish Singh, PW3 â?" Kharak Singh,

PW4 â?" Smt. Raj Bhatara, PW5 â?" Gurmail Singh, PW6 â?" Kuldip Singh, PW7 â?" Jatinder Sharma, PW8 â?" Jagdish Bhatara, PW9 â?" Avnish

Chander Bhatara, PW10 â?" SI Parabh Dayal, PW11 â?" SI Darshan Singh, PW12 â?" ASI Ram Kumar, PW13 â?" Kewal Singh MHC, PW14 â?"

Agnool PW15 â?" Inspector Jaswant Singh, PW16 â?" Dr. Madan Lal Puri. Thereafter, the prosecution evidence was closed and all the incriminating

evidence was put to accused under Section 313 Cr.P.C.

Thereafter, the trial Court after going through the evidence available on record, convicted and sentenced the appellants vide order dated 14.02.2003,

as noticed above.

Feeling aggrieved with the judgment of conviction and the order of sentence dated 14.02.2003, the appellant â?" Maninder Singh preferred the present

appeal and his sentence was suspended by this Court vide order dated 02.03.2004.

During the pendency of the present appeal, the sentence of the applicant/appellant was suspended vide order dated 02.03.2004.

Thereafter, on 28.01.2015, counsel for the State has sought to file reply in response to CRM No.9690 of 2004 filed by the appellant praying that the

appellant may be declared as a juvenile as he was 12 years and 03 days of age at the time of incident. Later on, vide order dated 01.02.2017, the

Chief Judicial Magistrate, Hoshiarpur, was directed to conduct an enquiry and submit the report about the date of birth of the appellant â?" Maninder

Singh.

The Chief Judicial Magistrate, Hoshiarpur, has submitted a report dated 11.08.2017 and the operative part of the said report is reproduced as under:-

â??Vide order dated 8.3.2017 the Hon'ble High Court directed this court to conduct inquiry as to whether Maninder Singh is juvenile or not.

2. During the inquiry Maninder Singh was examined as AW1 who deposed that his date of birth is 9.9.1987. At the time of alleged occurrence his age

was approximately 12 years and he was juvenile at that time. He tendered the copy of entry in the register maintained by the Gram Panchayat of

Mehmudapur of village Jadopur, Tehsil Nawabgang, District Bareilly (U.P.) as Ex.A1 and the notarized copy of his school leaving certificate as Ex.A2.

He further deposed that the verified copy of school leaving certificate has been placed on record by the police of P.S. Tanda, and the same is Ex.A3,

which is attested by the principal of the school as well.

3. AW2 Kirpal Singh father of applicant Maninder Singh deposed verbatim as per testimony of AW1 Maninder Singh and stated that the date of birth

of his son is 9.9.1987 and at the time of alleged occurrence his son was approximately 12 years.

4. During inquiry the SHO of Police Station Tanda was directed to verify school leaving certificate produced by the applicant.

5. H.C. Malkiat Singh suffered the statement that he was posted at P.S. Tanda and SHO of P.S. Tanda handed over him school leaving certificate of

Maninder Singh for verification of the same regarding its genuineness. On 17.07.2017 he had gone to school P.S. Mahmoodapur, District Bareilly, P.S.

Kuleria, Tehsil Nawab Ganj (U.P.) where principal of school Mahmudpur met him and verified that Maninder Parkash was studying in this school and

his date of birth is 9.9.1987. The report of the principal was proved as Ex.PA. He also met Pardhan of Gram Panchayat of village Jadopur, regarding

verification of birth certificate of Maninder Singh, who stated that Maninder Singh was student of their school and his date of birth as 09.09.1987 is

correct. The report of Pardhan was proved as Ex.PB. He further deposed that he went to Police Station Kuleria, Tehsil Nawab Ganj, District Bareilly

(U.P.) and proved the rapt No.22 dated 17.07.2017 of P.S. Kuleria as Ex.PC.

6. After going through the statements of witnesses and documents placed on record, I am of the considered opinion that the school leaving certificate

produced by the applicant as Ex.A3 has been duly verified by H.C. Malkiat Singh after visiting at the school, from where this certificate was issued.

The same is a genuine document. To corroborate his version the applicant/accused has also proved copy of the family register wherein also his birth

year is also mentioned as 1987. Even, the father of the applicant/accused has

deposed regarding his age. As discussed above the school leaving certificate of the school first attended has been duly proved on the file as Ex.A3 and the same shows the date of birth of Maninder Parkash son of Kirpal Singh as 09.09.1987. As per the bail order dated 2.3.2014 passed by the Hon'ble High Court the occurrence took place on 12.09.1999. Meaning thereby at the time of occurrence the age of the applicant was 12 years and 3 days and he was less than 18 years of age at the time of alleged occurrence. So, Maninder Parkash S/o Kirpal Singh was a juvenile as on the date of the commission of the offence. Report be sent to the Hon'ble High Court in this regard. Papers be consigned to the record room.â??

Counsel for the appellant has submitted that as per the report submitted by the Chief Judicial Magistrate, Hoshiarpur, it is held that at the time of occurrence i.e. on 12.09.1999, the appellant â?" Maninder Singh was of the age of 12 years and 03 days as the date of birth of the appellant was 09.09.1987 and he was a juvenile.

Counsel for the appellant has relied upon the judgment dated 16.03.2015, passed by the Hon'ble Supreme Court in Criminal Miscellaneous Petition No.17870 of 2014 filed in SLP (Criminal) No.2838 of 2000 titled as â??Abdul Razzaq vs State of U.P.â?, to submit that a person below the age of 18 years at the time of occurrence can claim the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000, at any stage, even during the pendency of the appeal. The operative part of the said judgment reads as under:-

â??9. The legal position on the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time.

Reference may be made to Section 7-A and 20 of the Act and Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 which are as follows:

â??Section 7-A. Procedure to be followed when claim of juvenility is raised before any court.â?"(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.â??

â??Section 20. Special provision in respect of pending cases.â?"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.â?"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.â??

â??Rule 12. Procedure to be followed in determination of age.â?"(1) In every case concerning a child or a juvenile in conflict with law, the court or

the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in

conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may

be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as

the case may be, the Committee by seeking evidence by obtainingâ?

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or

(iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by

them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and,

while 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 and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b)

shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the

conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age

and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or

the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in

terms of Section 7-A, Section 64 of the Act and these Rules, no

further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in

sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in

accordance with the provisions contained in sub- rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate

order in the interest of the juvenile in conflict with law.â??

10. The above provisions clearly show that even if a person was not entitled to the benefit of juvenilities under the 1986 Act or the present Act prior to

its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be

claimed even if a matter has been finally decided, as in the present case.

11. In Hari Ram vs. State of Rajasthan and Anr., it was observed:

â??49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any

court which 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 the Act and the Rules made thereunder which includes the definition of â??juvenileâ? in Sections 2(k) and 2(l) of the Act even if the

juvenile had ceased to be so on or before the date of commencement of the Act. (emphasis supplied)

50. The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the

proviso and the Explanation thereto, wherein also it has been clearly indicated that in any pending case in any court the determination of juvenility of

such a juvenile has to be in terms of Section 2(l) even if the juvenile ceases to be so â??on or before the date of commencement of this Actâ? and it

was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when

the alleged offence was committed. (emphasis supplied)

51. Apart from the aforesaid provisions of the 2000 Act, as amended, and the Juvenile Justice Rules, 2007, Rule 98 thereof has to be read in tandem

with Section 20 of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006,

which provides that even in disposed of cases of juveniles in conflict with law, the State Government or the Board could, either suo motu or on an

application made for the purpose, review the case of a juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for

the immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years.

52. In addition to the above, Section 49 of the Juvenile Justice Act, 2000 is also of relevance and is reproduced hereinbelow: 49. Presumption and

determination of age."(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise

than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for

that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child

or not, stating his age as nearly as may be. (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent

proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be

the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person."

53. Sub-section (1) of Section 49 vests the competent authority with the power to make due inquiry as to the age of a person brought before it and for

the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a finding as to whether the person is a juvenile or a

child or not, stating his age as nearly as may be.

54. Sub-section (2) of Section 49 is of equal importance as it provides that no order of a competent authority would be deemed to have become invalid

merely on account of any subsequent proof that the person, in respect of whom an order is made, is not a juvenile or a child, and the age recorded by

the competent authority to be the age of the person brought before it, would, for the purpose of the Act, be deemed to be the true age of a child or a

juvenile in conflict with law.

55. Sub-rule (3) of Rule 12 indicates that the age determination inquiry by the

court or Board, by seeking evidence, is to be derived from: (i) the matriculation or equivalent certificates, if available, and in the absence of the same; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

56. Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted

Medical Board, which would declare the age of the juvenile or the child. In case exact assessment of the age cannot be done, the court or the Board

or as the case may be, the Child Welfare Committee, for reasons to be recorded by it, may, if considered necessary, give benefit to the child or

juvenile by considering his/her age on the lower side within a margin of one year.

57. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile

Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes,

rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals.

58. Of the two main questions decided in Pratap Singh case [(2005) 3 SCC 551: 2005 SCC (Cri) 742], one point is now well established that the

juvility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by

the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000,

by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the

date of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all

persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if

the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing

sentence upon being convicted.â??

12. The above view was reiterated by a bench of three Judges in Abuzar Hossain

alias Gulam Hossain vs. State of West Bengal, as follows:-

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 : (2009) 3 SCC (Cri) 431 and Pawan (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522 these documents

were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857 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.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised.

13. Again, in Union of India vs. Ex-GNR Ajeet Singh it was held:-

â??19. The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of â??juvenileâ? to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence.

(See Jayendra v. State of U.P. [(1981) 4 SCC 149 : 1981 SCC (Cri) 809 : AIR 1982 SC 685], Gopinath Ghosh v. State of W.B. [1984 Supp SCC 228 : 1984 SCC (Cri) 478 : AIR 1984 SC 237],

Bhoop Ram v. State of U.P. [(1989) 3 SCC 1 : 1989 SCC (Cri) 486 : AIR 1989 SC 1329] , Umesh Singh v. State of Bihar [(2000) 6 SCC 89 : 2000

SCC (Cri) 1026 : AIR 2000 SC 2111], Akbar Sheikh v. State of W.B. [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431],

Hari Ram v. State of Rajasthan [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987], Babla v. State of Uttarakhand [(2012) 8 SCC 800 : (2012) 3 SCC

(Cri) 1067] and Abuzar Hossain v. State of W.B.

[(2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83]]â??

14. Reference may also be made to Jintendra Singh alias Babboo Singh and Anr. vs. State of Uttar Pradesh laying down as follows:

â??80. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of

occurrence, the proceedings pending in the court concerned will continue and be taken to their logical end except that the court upon finding the

juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act.

Applying that proposition to the case at hand the trial court and the High Court could and indeed were legally required to record a finding as to the guilt

or otherwise of the appellant. All that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred

the case to the Juvenile Justice Board.

81. The matter can be examined from another angle. Section 7-A(2) of the Act prescribes the procedure to be followed when a claim of juvenility is

made before any court. Section 7-A(2) is as under: â??7-A. Procedure to be followed when claim of juvenility is raised before any court.â?"(1) ***

(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.â??

82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any court, upon

such court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing

appropriate orders and the sentence, if any, passed shall be deemed to have (sic no) effect. There is no provision suggesting, leave alone making it

obligatory for the court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of

commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court. Applying the maxim *expressio unius est exclusio*

alterius, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication any

intention on the part of the legislature requiring the courts to set aside the conviction recorded by the lower court. Parliament, it appears, was content

with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication

requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside

the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate

of Section 7- A(2) of the Act.â??

15. Faced with the above, learned counsel for the State fairly stated that the petitioner may be entitled to the relief sought. He, however, points out

that a person claiming juvenile must approach the trial court first. Since in the present case, the High Court has declined to entertain an application as

per order dated 2nd December, 2014 a copy of which has been produced, we consider it appropriate to entertain this application.

16. In view of the above undisputed legal position, we have no option but to allow this application and while leaving the conviction undisturbed, set

aside the sentence. The petitioner may be released from custody forthwith unless required in any other case.â??

It is, thus, argued on behalf of the appellant that since it is proved that on the date of occurrence, the appellant was a juvenile, he should be granted the

benefit of Sections 7-A and 20 read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Counsel for the appellant has further submitted that even otherwise, the appellant has undergone actual sentence of 04 years, 06 months and 09 days

and total sentence including remissions is 05 years,

08 months and 29 days and the appellant is not involved in any other case.

Counsel for the appellant has, thus, submitted that since the appellant is proved to be a juvenile, he has undergone the maximum sentence of 03 years

as per Section 15 of the Act, therefore, the sentence awarded to the appellant may be reduced to the period already undergone by him.

Counsel for the State, on the basis of the Custody Certificate dated 24.04.2018 has not disputed the actual sentence undergone by the appellant and

has also not disputed the report submitted by the Chief Judicial Magistrate, Hoshiarpur, which is based on an enquiry conducted by him after recording the statement of the parties as well as the Station House Officer, Police Station Tanda.

After hearing the counsel for the parties, I find merit in the present appeal. As per the report submitted by the Chief Judicial Magistrate, Hoshiarpur,

at the time of the occurrence i.e. on 12.09.1999, the appellant â?" Maninder Singh was of the age of 12 years and 03 days old as his date of birth was

09.09.1987 and he was a juvenile. The appellant (being a juvenile) has already undergone actual sentence of 04 years, 06 months and 09 days and he

is also not involved in any other case.

Accordingly, in view of what has been discussed hereinbefore and also in view of the law laid down by Hon'ble Supreme Court in Abdul Razzaq's

case (supra), the present appeal is partly allowed. The judgment of conviction is upheld and the sentence awarded to the appellant i.e. rigorous

imprisonment for a period of 10 years and a fine of Rs.3,000/-, is reduced to the period already undergone by him i.e. 04 years, 06 months and 09

days.

Since, the appellant has undergone the maximum sentence prescribed under Section 15 of the Act, the fine of Rs.3,000/- stands remitted.

With the aforesaid modifications, the present appeal is disposed of.