



2026:DHC:7545



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010093382004

+ CRL.A. 134/2004, CRL.M.A. 95/2013

UDAI KUMAR ALIAS LOCHU & ANR.Appellants

Through: Mr. Jagat Rana, Adv.

versus

THE STATE

.....Respondent

Through: Mr. Shoaib Haider, APP for the State.

8

CNR No. DLHC010093832004

+ CRL.A. 177/2004, CRL.M.A. 1919/2013

BALMIKI KUMARAppellant

Through: Mr. Jagat Rana, Adv.

versus

THE STATE

.....Respondent

Through: Mr. Raj Kumar, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER (ORAL)

1. Hybrid mode.
2. The instant Appeals have been directed against the Judgment dated 06.02.2004 (hereinafter referred to as the "Impugned Judgment") and the Order on Sentence dated 12.02.2004 (hereinafter referred to as the "Impugned Order") passed by the learned Additional Sessions Judge, Delhi, whereby Appellant Balmiki Kumar in CRL.A. 177 of 2004 was sentenced to



undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- for the offence punishable under Section 393 of the Penal Code, in default whereof to undergo rigorous imprisonment for a period of 09 months, rigorous imprisonment for a period of 07 years for the offence punishable under Section 398 of the Penal Code and rigorous imprisonment for a period of 03 years and to pay a fine of Rs.10,000/- for the offence punishable under Section 5 of the Explosive Substances Act, 1908, in default whereof to undergo rigorous imprisonment for a period of nine months. The Appellants Vinod Kumar and Uday Kumar were each sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.10,000/- for the offence punishable under Section 5 of the Explosive Substances Act, 1908, in default whereof to undergo rigorous imprisonment for a period of 09 months.

3. During the pendency of the Appeals, CRL.M.A. 1919 of 2013 and CRL.M.A. 95 of 2013 have been filed by the Appellants under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the “JJ Act, 2000”) seeking a declaration that they were juveniles on the date of commission of the offence and for consequential relief in accordance with law.

4. Shorn of unnecessary details, the facts, in brief, leading to the present Appeals are as under:-

- a. It is the case of the Prosecution that on 26.11.1997 at about 09.30 PM, the Appellants reached House No. T-236/4, Indira Colony, Narela, Delhi, with the intention of committing robbery. At that time, Balmiki Kumar was allegedly armed with a bomb, an iron punch and a steel chain, whereas his associates were carrying toy pistols and knives.



- b. Purshotam Kumar, who was residing in the aforesaid premises as a tenant, was in his room when he heard sounds coming from outside. Upon opening the door, he found the Appellants in the compound of the house. On being questioned, one of the offenders brandished a knife while the others pointed toy pistols at him. Purshotam Kumar thereafter started moving backwards and reached the room of his employer, Harender Kumar Kukreja, who in turn dragged Purshotam Kumar into the room and shut the door.
- c. Thereafter, an alarm was raised and, on hearing the cries for help, persons from the locality gathered at the spot. Balmiki Kumar was overpowered by the members of the public, whereas the others escaped. The Police were summoned to the spot and Balmiki Kumar was handed over to the Police.
- d. During investigation, Balmiki Kumar was arrested and one bomb, one iron punch and one steel chain were recovered from his possession. At his instance, his associates, namely Uday Kumar and Vinod Kumar, were arrested from a room in Kachhi Colony, Swatantra Nagar, Narela, Delhi. One bomb and a knife were recovered from the possession of Vinod Kumar, whereas a revolver was recovered from the possession of Uday Kumar.
- e. Charges for the offence punishable under Section 393 read with Section 34 of the Penal Code were framed against the accused persons. Separate charges were also framed against the accused persons for the offence punishable under Section 398 of the Penal Code and under Section 5 of the Explosive Substances Act, 1908. The accused persons pleaded not guilty to the charges and claimed trial.



- f. After considering the evidence brought on record, the learned Trial Court held Appellant Balmiki Kumar guilty of the offences punishable under Sections 393 and 398 of the Penal Code and Section 5 of the Explosive Substances Act, 1908. Appellants Vinod Kumar and Uday Kumar were acquitted of the charges under Sections 393 and 398 of the Penal Code, but were held guilty and convicted for the offence punishable under Section 5 of the Explosive Substances Act, 1908.
5. Learned counsel for the Appellants has, during the pendency of the Appeals, raised the issue of juvenility. It has been submitted that Uday Kumar was born on 10.12.1982, Vinod Kumar was born on 05.07.1984 and Balmiki Kumar was born on 05.07.1980. It has been further submitted that this Court, vide orders dated 14.01.2013 and 31.07.2013, directed the learned Trial Court to hold an enquiry into the age of the Appellants. The learned Additional Sessions Judge thereafter conducted the age determination enquiry and submitted the report dated 18.08.2017.
6. The question which arises for consideration is as to whether the Appellants were “children in conflict with law” on the date of commission of the offence and, if so, what would be the consequence of such finding upon the conviction and sentence recorded by the learned Trial Court.
7. The issue as noticed above is no longer *res integra* and is covered by the decision of the Constitution Bench of the Hon’ble Supreme Court in ***Pratap Singh v. State of Jharkhand*, (2005) 3 SCC 551**. The questions which arose for consideration before the Hon’ble Supreme Court were as to whether the date of occurrence or the date of production before the Court would be relevant for determining the age of the juvenile and whether the JJ Act, 2000 would apply to a proceeding initiated under the Juvenile Justice



Act, 1986 and pending when the JJ Act, 2000 came into force.

8. The aforesaid questions were answered by the Hon'ble Supreme Court by holding that the reckoning date for determination of the age of a juvenile is the date of commission of the offence and not the date when the person is produced before the Court or the competent authority. It was further held that the JJ Act, 2000 would apply to a pending proceeding initiated under the Juvenile Justice Act, 1986 where the person had not completed eighteen years of age as on 01.04.2001.

9. A perusal of the above noted conclusion shows that the date for determining the age of a juvenile is the date when the offence was committed. The offence in the present case was committed on 26.11.1997. However, the Hon'ble Supreme Court, while considering the second question in *Pratap Singh (supra)*, made it clear that the JJ Act, 2000 would apply to a proceeding which was pending when the JJ Act, 2000 came into force, subject to the conditions noticed therein.

10. The judgment of the Hon'ble Supreme Court in *Pratap Singh (supra)* was subsequently explained in *Hari Ram v. State of Rajasthan &Anr.*, (2009) 13 SCC 211 which has been reproduced hereunder:

“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 “juvenile” 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.

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 “on or before the date of commencement of this Act” 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.

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 juvenility 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.”

11. Section 20 of the JJ Act, 2000, as explained by the Hon’ble Supreme Court in ***Hari Ram*** (supra), is particularly relevant in respect of pending cases. The Explanation to Section 20 makes it clear that in all pending cases, including trial, revision and appeal, the determination of juvenility is to be made in terms of Section 2(l), even if the juvenile had ceased to be so on or before the commencement of the JJ Act, 2000. The Hon’ble Supreme Court further held that Section 20 enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board for passing appropriate orders in accordance with the Act.

12. The manner of determination of age is also prescribed under the juvenile justice legislation. Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 gives precedence to the date of birth certificate from the school or the matriculation or equivalent certificate from



the concerned examination Board, followed by the birth certificate issued by a municipal authority or panchayat and, only in the absence of the aforesaid documents, medical age determination. The learned Additional Sessions Judge followed the aforesaid statutory framework while conducting the age determination enquiry which has been reproduced hereunder:

“(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

- i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
- ii. the birth certificate given by a corporation or a municipal authority or a panchayat;*
- iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”

13. In the present case, the learned Additional Sessions Judge, after conducting the age determination enquiry, recorded a categorical finding with respect to each of the Appellants. In the case of Uday Kumar, the date of birth recorded in the certificate issued by DM High School, Shekhpura was 10.12.1982. The said record was accepted by the learned Court below and his age was computed as 14 years, 11 months and 16 days on 26.11.1997.

14. In the case of Vinod Kumar, the records of DM High School,



Shekhpura as well as the Bihar Vidyalaya Pariksha Samiti, Patna recorded his date of birth as 05.07.1984. The learned Additional Sessions Judge found no material to doubt the said records and computed his age as 13 years, 04 months and 21 days on 26.11.1997.

15. As regards Balmiki Kumar, the school leaving certificate and admission record of DM High School, Shekhpura recorded his date of birth as 05.07.1980. The said documents remained unimpeached and his age was accordingly computed as 17 years, 04 months and 21 days on 26.11.1997.

16. The medical age estimation reports were also noticed by the learned Additional Sessions Judge. However, in view of the availability of the school records, the medical evidence was not made the foundation for determination of age and was only taken into consideration for lending assurance to the conclusion arrived at on the basis of the documentary evidence.

17. Thus, the age determination report dated 18.08.2017 concludes that Uday Kumar, Vinod Kumar and Balmiki Kumar were aged 14 years, 11 months and 16 days, 13 years, 04 months and 21 days, and 17 years, 04 months and 21 days, respectively, on the date of commission of the offence. All three Appellants were, therefore, children in conflict with law on the said date.

18. In view of the categorical findings recorded pursuant to the enquiry directed by this Court, there is no reason to differ from the conclusion that none of the Appellants had completed eighteen years of age on 26.11.1997.

19. The fact that the offence was committed in the year 1997, when the Juvenile Justice Act, 1986 was in operation, does not alter the position. The subsequent statutory development and the law declared by the Hon'ble



Supreme Court in **Pratap Singh** (supra) and **Hari Ram** (supra) make it clear that the age of the Appellants is required to be determined with reference to the date of commission of the offence and that the subsequent enlargement of the threshold to eighteen years is to be given effect in the manner prescribed by the statute in pending proceedings.

20. Consequently, Uday Kumar, Vinod Kumar and Balmiki Kumar were juveniles/children in conflict with law on the date of commission of the offence.

21. Having arrived at the aforesaid conclusion, the next question is as to the effect of such finding upon the sentence imposed by the learned Trial Court.

22. Section 7-A of the JJ Act, 2000 specifically contemplates that where a claim of juvenility is raised before any Court, the Court shall make an enquiry and record a finding as to whether the person was a juvenile on the date of commission of the offence. Where such person is found to be a juvenile, the sentence, if any, passed by the Court shall be deemed to have no effect. The same position has been carried forward in the Act of 2015.

23. The Hon'ble Supreme Court in **Hari Ram** (supra) has further clarified that in pending proceedings the Court may determine juvenility even after conviction by the regular Court and, while maintaining the conviction, set aside the sentence imposed and forward the case to the Juvenile Justice Board for appropriate orders in accordance with the juvenile justice legislation.

24. In the present case at hand, the nominal roll placed on record shows that Appellant Vinod Kumar has undergone a period of 11 months and 06 days, apart from an under trial period of 01 month and 05 days, with



remission earned of 02 months and 09 days. The unexpired portion of his sentence has been recorded as 01 year, 10 months and 15 days.

25. Insofar as Appellant Uday Kumar is concerned, the nominal roll records an under trial period of 01 month and 23 days and a period undergone of 01 year, 01 month and 09 days, with remission earned of 01 month and 25 days. The unexpired portion of sentence has been recorded as 01 year, 08 months and 26 days.

26. As regards Appellant Balmiki Kumar, the nominal roll records an under trial period of 27 days and a convict period of 02 years, 10 months and 23 days, making the total period undergone 02 years, 11 months and 20 days. The remission earned is recorded as 08 months and the unexpired portion of sentence as 03 years, 08 months and 20 days.

27. The JJ Act is a beneficial legislation intended to ensure that a child in conflict with law is dealt with through the statutory framework governing children and is not subjected to the ordinary sentencing regime applicable to adult offenders.

28. In a similar set of facts, the Hon'ble Supreme Court, in a number of decisions, has held that where an accused is found, even at the appellate stage or at any subsequent stage of the proceedings, to have been a juvenile, that is, to have not completed eighteen years of age on the date of commission of the offence, such subsequent determination of juvenility does not, by itself, render the conviction recorded by the regular Court ineffective. However, the sentence imposed cannot be given effect to and has to be set aside or rendered ineffective. In this regard, the Hon'ble Supreme Court in *Karan @ Fatiya v. State of Madhya Pradesh*, (2023) 5 SCC 504 has held as reproduced hereunder:



“37. Having considered the statutory provisions laid down in Section 9 of the 2015 Act and also Section 7-A of the 2000 Act which is identical to Section 9 of the 2015 Act, we are 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 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. 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 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the mainstream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

38. In view of the above discussion and the position in law as laid down by the aforesaid judgments and many others referred to in the above judgments, we approve the view taken by this Court in Jitendra Singh [Jitendra Singh v. State of U.P., (2013) 11 SCC 193 : (2013) 4 SCC (Cri) 725] , Mahesh [Mahesh v. State of Rajasthan, (2021) 18 SCC 582 : 2018 SCC OnLine SC 3655] and Satya Deo [Satya Deo v. State of U.P., (2020) 10 SCC 555 : (2021) 1 SCC (Cri) 61] .

39. For all the reasons recorded above, it is ordered as follows: The conviction of the appellant is upheld; however, the sentence is set aside. Further as the appellant at present would be more than 20 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. The appellant is in judicial custody. He shall be released forthwith. The impugned judgment [Karan v. State of M.P., 2018 SCC OnLine MP 1849] shall stand modified to the aforesaid extent.

40. Both the appeals stand partly allowed.”

The Hon’ble Supreme Court in Dinesh Kumar v. The State of Haryana, Criminal Appeal No. 64 of 2011 decided on 12.08.2026, reiterated the aforesaid legal position and held as reproduced hereunder:



“26. The statutory position is settled by *Hari Ram v. State of Rajasthan*¹ ; *Dharambir v. State (NCT of Delhi)*² ; and *Jitendra Singh @ Babboo Singh v. State of U.P.*³ , whereby this Court recognized that a person below eighteen on the date of an offence committed even before 1st April, 2001 receives the benefit of the 2000 Act; This Court further held that a conviction on merits need not be annulled merely because the person was tried by a regular court; and however the adult sentence cannot survive.

27. The Principal Magistrate, Juvenile Justice Board, Sonapat conducted an inquiry and, by order dated 12th October, 2012 accepted the appellant's date of birth as 3rd February, 1981. The Board calculated his age as seventeen years, six months and eleven days by reference to 14th August, 1998, the date on which the FIR was registered. The occurrence, however, is consistently alleged to have taken place on 10th August, 1998. On that date, the appellant was seventeen years, six months and seven days old. The four-day difference in calculation is immaterial: since on either date he had not completed eighteen years.

28. The record further shows that the Juvenile Justice Board directed the appellant's immediate release after noting that he had already undergone custody for more than three years. The maximum period for which a juvenile could be sent to a special home under Section 15(1)(g) of the 2000 Act was three years. The order of juvenility has not been displaced, and this Court's order dated 9th October, 2025 records that the proceedings culminated in a declaration that Dinesh Kumar was a juvenile on the date of the offence i.e., 10.08.1998.

29. We accordingly accept the declaration of juvenility. The sentence of life imprisonment and the sentence of seven years' rigorous imprisonment, together with the fine and default stipulations imposed by the Trial Court, cannot operate against the appellant. Ordinarily, the matter would be forwarded to the Board for the appropriate disposition. That exercise has already been completed: the Board has passed an order, found that the appellant had undergone more than the statutory maximum and directed his release. A fresh remand would be empty formality and contrary to the rehabilitative object of the enactment.

¹(2009) 13 SCC 211

²(2010) 5 SCC 344

³(2013) 11 SCC 193



30. *The connected case furnishes direct parity. In Manoj v. State of Haryana, Criminal Appeal No. 768 of 2011, decided on 6th August, 2025 this Court maintained the conviction arising from the same trial but held that the juvenile appellant, having already undergone more than the permissible maximum, need not surrender and discharged his bail bonds. The same consequence must follow here. Section 19 of the 2000 Act further provides that a juvenile dealt with under the Act shall not suffer any disqualification attached to a conviction under another law. The appellant shall therefore receive the statutory protection against such disqualification, and the competent Board/authority shall take the consequential steps regarding the records in accordance with Section 19 and the applicable rules.*

31. *As such, Interlocutory Application No. 27571 of 2024 is allowed and the Order dated 12th October, 2012 of the Juvenile Justice Board, Sonapat, together with the connected inquiry record, is taken on record. The finding that the appellant Dinesh Kumar was a juvenile on the date of the offence, 10th August, 1998 is accepted.*

32. *The conviction of the appellant for the offences punishable under Sections 302 read with 34 and 392 read with 34 IPC is affirmed. The sentences imposed by the Additional Sessions Judge, Sonapat on 18 September 2000 and affirmed by the High Court on 18 September 2009, including the substantive imprisonment, fine and default stipulations, are set aside and shall be treated as having no effect against the appellant in view of Section 7A(2) read with Sections 15 and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. As the appellant has already undergone detention exceeding the maximum period permissible under the 2000 Act and has been released pursuant to the order of the Juvenile Justice Board/ interim orders of this Court, he shall not be required to surrender. His bail bonds, if subsisting, shall stand discharged.*

33. *The Appellant shall not suffer any disqualification attached to the conviction, in terms of Section 19 of the 2000 Act. The Juvenile Justice Board, Sonapat shall ensure compliance with the consequential statutory requirements concerning the records. In the above terms, the Appeal is partly allowed.*

34. *Pending applications, if any, stands consigned to record.”*



29. In the facts and circumstances of the present case, and in view of the categorical determination that the Appellants were “children in conflict with law” on the date of commission of the offence, the sentences imposed by the learned Trial Court cannot be given effect to in their present form. Resultantly, the Order on Sentence dated 12.02.2004, passed against Appellants Uday Kumar, Vinod Kumar and Balmiki Kumar are set aside. The conviction recorded by the learned Trial Court is, however, maintained. The consequences flowing from the finding of juvenility shall be governed by the provisions of the applicable Juvenile Justice legislation and shall be dealt with in accordance with law.

30. The present Appeals are, accordingly, disposed of alongwith the pending applications, if any.

31. Copy be transmitted to the Court concerned and Prison Authorities for information and compliance.

VIMAL KUMAR YADAV, J

SEPTEMBER 2, 2026/ps/ij