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Case Comment: Lakhan Lal v. State of Bihar - In light of the Principle of Retrospective Effect

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INTRODUCTION

Prosecution Case - Since during the commission of the offence under *section 302* read with *section 34 of IPC* by the appellant Lakhan Lal was a minor as per the meaning of *section 2k of Juvenile Justice (care And Protection of Children) Act (JJA) 2000*, the order passed against the appellants by the Patna High Court should be set aside.

Defence Case - Guilt of offence under *section 302* read with *section 32 of IPC* by appellant is proven and substantiated with witnesses and evidences. The accused is no longer a minor at present so there should be no reason that the accused should be excused from punishment.

Decision/ Judgement - The Supreme Court said that prove of guilt is not the issue in this case and held in favor of the appellants for they were minors during the commission of crime as per *section 2k of the Juvenile Justice Act 2000*.

ISSUES

1. Whether prove of guilt for murder should be set aside in this trial at all.

2. According to *JJA 1986 and Bihar Children Act 1982*, the appellant was a major during the commission of the crime, can the *JJA 2000* overpower these acts.
3. Applicability of current age for determining and granting of punishment.

INDIAN RULES/ACTS

Indian Penal Code (1860) - Section 302, Section 34.

Juvenile Justice (care And Protection Of Children) Act (2000) - Section 15 , Section 2 , Section 2(1) , Section 2(k) , Section 20 , Section 49 , Section 7A, Section 63.

Juvenile Justice (care And Protection Of Children) Act (2007)- Rule12 and Rule 98.

Other Indian Rules/Acts referred: The Probation Act 1958, JJA 1986 and Bihar Children Act 1982.

Indian Cases Referred: Dharambir vs State (NCT of Delhi) and Anr., Pratap Singh vs State of Jharkhand and Anr., Hari Ram vs State of Rajasthan and Anr., Umesh Singh and Anr. vs State of Bihar, Bhola Bhagat vs State of Bihar , Gopinath Ghosh vs State of West Bengal and Bhoop Ram vs State of U.P.

International Cases: Saqlain vs State and Ors(Pakistan), Miller vs Alabama(United States).

International Rules/Statutes: Juvenile Justice System Ordinance 2000 (Pakistan), Eighth Constitutional Amendment 1791 (United States).

ANALYSIS

The current appeal totally disregards the judgment of the previous court, where the accused were confirmed conviction for the offence under *section 302¹* read with *section 34²* of IPC.

However, in the present judgment, the issue arises of if it is justified to totally disregard the fact that a heinous crime was committed, the order totally set aside the proven guilt which is the

¹ Indian Penal Code 1860, s 302

² Indian Penal Code 1860, s 34

cause of the trial. This seems a little strange to me, Under the *Probation Act 1958*, adolescents between the age of 18 to 21 years are sent to reformatory schools and given alternative punishments for small crimes but not for heinous crimes, it would have been lesser strange if the cause of this trial was not that of a murder offence. According to *JJA 1986 and Bihar Children Act 1982* a minor is a person who is below the age of 16 for male child and 18 for a female child, this means that as per these statutes the accused were not minors when the crime was committed. However the appellant counsel put forth by saying that the offence was committed by the appellants when they were of age 16 years and 10 months and 16 years and 5 months as per the Bihar School Education Board and was a minor as per *section 2k³ of JJA 2000*, and hence his conviction for life imprisonment should be set aside. Here the principle of ‘*non-retrogression*’ will apply where the *JJA 2000* shall supersede any other laws contrary, *section 20⁴ of JJA 2000* states to provide appropriate punishments and take actions in pending and subsequent cases before the implementation of this act and if a juvenile is found guilty for offenses committed, then the course of actions will be carried out as per granted under this act. The same was highlighted in the case of *Dharambir vs State (NCT of Delhi) and Anr*⁵. Joint reading sections *2k, 2(16), 7A⁷, 20, 49⁸ of JJA 2000 with rules 12⁹ and 98¹⁰ of JJA 2007* states that any person below the age of 18 who has committed a crime prior and after commencement of the *JJA 2000* can claim juvenility even after they have the age of majority or is undergoing sentence¹¹.

The next issue is to consider as to what punishment may be applicable for the offence committed under *section 302* read with *section 34 of IPC*, normally it will be a capital punishment or imprisonment for a lifetime but the fact that the offence was committed when minor. Sending the accused to the reformatory schools and special homes under the JJA will definitely be not

³ Juvenile Justice (care And Protection of Children) Act 2000, s 20

⁴ *Ibid*

⁵ *Dharambir v State (NCT of Delhi)* (2010) 5 SCC 344

⁶ Justice Act (n 4), s 2(1)

⁷ Justice Act (n 4), s 7a

⁸ Justice Act (n 4) s 49

⁹ Juvenile Justice (care And Protection of Children) Act 2007, rule 12

¹⁰ *Ibid* rule 98

¹¹ *Hari Ram v State of Rajasthan* (2009) 13 SCC 211

suitable and applicable as they have cross the age of 40 years old now. But similarly sentencing the accused for life imprisonment will also be not considered fair as the act of offence was committed when they were minors. In the case of *Pratap Singh vs State of Jharkhand and Anr*, the court held that determination of whether a person is a minor or not is taken into consideration on the day the offence has been committed and not on the day the accused is produced before the court¹². In such circumstances they can either be released or granted imprisonment for 3 years under *section 15¹³ of JJA 2000*, which is the maximum period provided under this act. This section applies to cases where there is commission of heinous crimes like rape and murder in order to bring and give a sense of justice to the victims and the victim families by not providing the accused with complete immunity under the Act.

COMPARATIVE ANALYSIS

Juvenile Justice Laws and systems are almost the same in most countries, most countries follow the guidelines of *United Nations of Child Rights (UNCR)*. India and Pakistan seems to have almost the same laws, in the case of *Saqlain vs. State and Ors*, the appellant, a minor was sentenced to imprisonment illegally for murder, the Lower courts did not take into consideration if the accused was a minor. In the Indian case, *Lakhan Lal vs State of Bihar*, this consideration aroused as to whether the courts considered if the accused were minors at all or not and if so sentencing proper punishments can be taken into consideration, a similar situation also aroused in the case of *Umesh Singh and Anr. vs State of Bihar*¹⁴. However, the court in this case relied on the decisions taken by the earlier courts in cases of *Bhola Bhagat vs State of Bihar*¹⁵, *Gopinath Ghosh vs State of West Bengal*¹⁶ and *Bhoop Ram vs State of U.P*¹⁷ to come to the consideration that all criminal charges against the accused need to be set aside for the crime was committed when under the age of 18 years. However, in this case the Supreme Court of Pakistan denied release and disregarded plea of juvenility and declared that this was an

¹² *Pratap Singh v State of Jharkhand* (2005) 3 SCC 551

¹³ Justice Act (n 4), s 15

¹⁴ *Umesh Singh v State of Bihar* 1984 Supp SCC 228

¹⁵ *Bhola Bhagat v State of Bihar* (1997) 8 SCC 720

¹⁶ *Singh* (n 15)

¹⁷ *Bhoop Ram v State of Uttar Pradesh* (1989) 3 SCC 1

afterthought as the school education document was obtained through corrupt means in order to enjoy benefits granted under the *Juvenile Justice System Ordinance (2000)*. Around in the mid-90s there was a rapid up rise of cases of crimes committed by the juveniles in the US, this is why most US States have very rigid and aggressive Juvenile laws unlike in India how it is aimed to protect the juveniles. In the landmark case of *Miller vs Alabama*, the accused, a minor of 14 years old was sentence to imprisonment for murder without granting parole which was declared as unconstitutional by the Supreme Court of United States as per the *Eighth Amendment 1791, of the US Constitution*¹⁸. Hence, we can say that in India the Juvenile Laws are more liberal, this can be highlighted in this case (Lakhal Lal) where the accused were released, perhaps it may have not been the same in most US States.

CONCLUSION AND SUGGESTION

Children are innocent, their minds are not matured fully and can be prone to being easily manipulated, and many children from the poorer societies are in Juvenile homes, where they have been threatened and coerced into doing the wrong and the unlawful activities or are manipulated with money and cash. Children with poor upbringings are mostly prone to such circumstances and in order to change and develop this issue the Juvenile Justice Act has been implemented which aims at protecting, reforming and rehabilitating children victims of such circumstances. The Juvenile care are categorized into two, one for children who are in conflict with law and the other who are in need of protection. However, there is a need to improve the system and shelter homes of these children. Many children in the Juvenile/observation homes suffer from depression and frustration, most want to escape these homes and damage properties, instead of getting rehabilitated they become more violent and careless. Hence, it becomes important to find out why these things are happening and why solutions are needed. I will now like to conclude by giving some suggestion and recommendations from an empirical approach:

- To bring the Juvenile Law in more conformity with the UNCR.

¹⁸ United States Constitution, Eighth Amendment (1791)

- To make the Juvenile homes and shelters more children friendly and appreciative towards the development of each and every child in these homes.
- *Section 63¹⁹ of JJA 2000* states that the police and officers that frequent come in contact with the shelter homes will be trained, however there are cases where children face frustration because of how these officers misbehaved with them.
- Speedy disposal of juvenile cases.
- Improve the living conditions in these homes or if not invite NGOs with open arms to take initiatives and provide services to these children.
- Children under 14 years in Juvenile homes are tender, they need a safe home for their well upbringing as children, and good foster homes can also be a solution to these children.
- Lastly, to sensitized the society to be more considerate and civil towards the system and children of such circumstances.

¹⁹ Justice Act (n 4), s 63