2025 INSC 1336

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1072 OF 2018

UMESH YADAV & ORS. **...Appellant (s)**

VERSUS

THE STATE OF BIHAR **...Respondent(s)**

J U D G M E N T

Rajesh Bindal, J.

1. The present appeal arises from the judgment[1] of the High Court[2] in Criminal Appeal (DB) No. 374 of 1993.

2. The Trial Court[3] convicted eight accused persons for offences punishable under Sections 302/149 and 323/149 of the Indian Penal Code, 1860 and sentenced them to undergo Rigorous Imprisonment for life.

1 Dated 14.12.2017
2 High Court of Judicature at Patna
3 Additional Sessions Judge I, Gaya

3. All eight accused persons challenged their conviction and sentence by filing Criminal Appeal No.374 of 1993 before the High Court. The appeal qua Genda Pandit, Kauleshwar Pandit and Ramji Yadav abated as they died during the pendency of the appeal. The High Court confirmed the conviction and sentence imposed by the Trial Court and dismissed the appeal vide the impugned order.

4. Appellant Nos.1 and 2, namely Umesh Yadav and [redacted] (both sons of Jitan Yadav), raised claim of juvenility before this Court for the first time, arguing that they were less than 18 years of age on the date of the incident (August 30, 1988). As the claim of juvenility was not raised in the courts below, this Court vide order dated 25.11.2019 directed the Trial Court to conduct an enquiry and submit a report. As far as Appellant No. 2 [redacted] is concerned, the report suggests that there was no documentary evidence to prove his date of birth. Ossification test was conducted. The Medical Board submitted the Report dated 03.03.2020 on the basis of which, the age of [redacted] appeared to be 19 years.

5. The issue as to how the age, as determined in ossification test, is to be considered has been gone into by this Court in ***Jaya Mala v. Home Secretary, Government of Jammu & Kashmir,***[4] in which it has been observed that when school records or reliable certificates are unavailable or suspected to be tampered with, courts may rely on medical determination with a margin of error of 2 years on the lower or higher side applied to it. Relevant para therefrom is extracted below:

> ***"9.*** *Detenu was arrested and detained on October 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention. Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert, in October 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true.* ***However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side.*** *Undoubtedly, therefore, the detenu was a young school-going boy. It equally appears that there was some upheaval in the educational institutions. This young school-going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law.*

4 (1982) 2 SCC 538

> *It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed."*

6. Considering the reports submitted by the Additional District and Sessions Judge-I, Gaya, and law laid down by this Court in the aforesaid judgment, giving benefit of two years to Appellant No.2 [redacted] rom the age determined by the ossification test, he can be said to be 17 years of age on the date of commission of offence. Hence, he can be given the benefit of being juvenile. Maximum punishment which can be awarded to a juvenile under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015, is 3 years of detention in a special home. [redacted] s said to have already undergone imprisonment of more than 8 years. Hence, he deserves to be released immediately unless required in any other case. Ordered accordingly.

7. Insofar as Appellant No.1/Umesh Yadav is concerned, it was claimed that he was elder brother of Appellant

No.2 [redacted]. There were lot of discrepancies in the documents produced to prove his age. However, considering the fact that he is admittedly elder brother of [redacted] whose age having been determined by ossification test as 19 years, the age of Umesh Yadav will be more that. Hence, he cannot be given the benefit of being juvenile on the date of commission of offence.

8. As far as the merits of controversy is concerned, learned counsel for the appellants did not challenge the conviction. However, he submitted that in the case in hand, the incident took place more than three decades back. There have been no complaints against the appellants during their period of custody. The life sentence awarded to them may be reduced to a fixed term. This Court can exercise such a power in terms of law laid down in ***Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka***[5]**.**

9. Learned counsel for the respondent-State submitted that the appellants do not deserve any leniency in the matter.

10. After hearing learned counsel for the parties and considering the submissions made by them, especially the fact

5 (2023) 9 SCC 817: 2023 INSC 306

that the incident took place more than 35 years back and the appellants besides Umesh Yadav, whose age was not ascertained, namely, Appellant No.3/Baleshwar Pandit and Appellant No.4/Muneshwar Pandit are presently about 67 years and 59 years respectively, in our opinion, the sentence awarded to the three of them can be modified to a fixed term of 14 years of actual imprisonment. It needs to be mentioned here that the case of Appellant No.5/Jitan Yadav has already been dismissed by this Court vide order dated 11.05.2018 for non-compliance of pre-emptory order.

11. The appeal is partly allowed to the extent mentioned above. The impugned judgment of the High Court is modified accordingly.

.....J.
(RAJESH BINDAL)

.....J
(MANMOHAN)

New Delhi;
October 30, 2025.