

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 22nd OF JUNE, 2022

CRIMINAL APPEAL NO.696 of 2011

Between:-

1. **SANJAY SINGH, PRESENTLY AGED ABOUT 32 YEARS**
2. **BABUA @ RAJIV SINGH, PRESENTLY AGED ABOUT 30 YEARS, BOTH SONS OF RAJENDRA SINGH**
3. **RAJENDRA SINGH S/O SUKHU SINGH TOMAR, PRESENTLY AGED ABOUT 65 YEARS, ALL AGRICULTURISTS AND R/O VILLAGE ENDORI, POLICE STATION ENDORI, TEHSIL GOHAD, DISTRICT BHIND PRESENTLY AT CENTRAL JAIL, GWALIOR**

.....APPELLANTS

(BY SHRI AYUSH SAXENA – ADVOCATE)

AND

**STATE OF MADHYA PRADESH,
THROUGH : POLICE STATION
ENDORI, TEHSIL GOHAD,
DISTRICT BHIND.**

.....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

 Reserved on : 16th of June, 2022
 Delivered on : 22nd of June, 2022

*This appeal coming on for final hearing this day, **Hon'ble Shri Justice G.S. Ahluwalia**, passed the following:*

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the Judgment and Sentence dated 29-7-2011 passed by Additional Sessions Judge, Gohad, Distt. Bhind in S.T. No.56 of 2000 by which the Appellants have been convicted for the following offences :

Appellants	Conviction under Section	Sentence
Appellants	302 of IPC on two counts	Life Imprisonment and fine of Rs. 1000/- in default 3 years R.I. (two counts)
Appellants No. 1 and 2	25 (1)(a) and 27 of Arms Act	5 years R.I. and fine of Rs. 1,000/- in default 1 year R.I.

All the sentences shall run concurrently.

2. At the outset, it is mentioned that during the pendency of the Appeal, the Appellant No. 3 Rajendra Singh died and accordingly, by order dated 16-6-2022, his appeal has been **dismissed as abated**.

3. The necessary facts for disposal of the present appeal in short are

that on 30-7-1999 at about 6:30 P.M., Virendra Singh went to a well for fetching water. It is alleged that the Appellant Rajendra Singh, Sanjay Singh and Babua @ Rajiv Singh, surrounded him. Rajendra Singh was armed with gun and a knife, Sanjay Singh was having country made pistol and sword and Babua @ Rajiv Singh was having Country made pistol and knife. Virendra Singh took shelter in the house of Abhilak. He was dragged out of the house. Thereafter, Sanjay Singh beheaded Virendra Singh whereas Appellants Babua @ Rajiv Singh and Rajendra Singh pierced knife in chest and abdomen, as a result, Virendra Singh died on the spot. Raghunandan was also on the spot. He too was killed by the Appellants by causing injuries by gun, sword, pistol and knife. The mother of the deceased Virendra Singh, namely Ramrani, her daughter-in-law Guddi and wife of deceased Raghunandan, namely Sushila had also come on the spot.

4. The complainant Ramrani lodged Dehati Nalishi and apart from narrating the above mentioned facts, also stated that Rajendra was challenging that he will kill the entire family. Earlier, three buffaloes of Rajendra Singh went missing and the Rajendra Singh had levelled the allegation of theft against Virendra. Accordingly, a Panchayat was convened and Virendra gave his three buffaloes to Rajendra Singh in order to pacify the situation. After 15 days, the buffaloes were returned by Rajendra Singh in Panchayat. Rajendra Singh was insisting that Virendra must find out the thieves and whereabouts of his buffaloes. Due to this enmity, Virendra Singh has been killed. The reason for killing Raghunandan would be disclosed by his wife Sushila. On this Dehati Nalishi, police registered the offence. The appellants were arrested. The

statements of witnesses were recorded. Spot map was prepared. The post-mortem of dead bodies was got done. The weapons of offence were seized and were sent to F.S.L. Sagar. Sanction for prosecution under Arms Act was obtained. The police after completing the investigation, filed charge sheet for offence under Sections 302/34 of IPC and under Sections 25/27 of Arms Act. Initially Rajendra Singh was absconding accordingly, charge sheet was filed under Section 299 of Cr.P.C., but at a later stage, he too was arrested and supplementary charge sheet was filed against him.

5. The Trial Court by order 25-3-2000, framed charges under Sections 302 of IPC (for killing two persons) and under Section 25(1)(a) and 27 of Arms Act against the Appellants no.1 and 2, namely, Sanjay Singh and Babua @ Rajiv Singh. After the Appellant No.3 Rajendra Singh was arrested, charge under Section 302 of IPC was framed against him by order dated 19-1-2001 for killing two persons.

6. The Appellants abjured their guilt and pleaded not guilty.

7. The prosecution examined Tundaram (P.W.1), Santosh Kumar (P.W.2), Jaishiv Sharma (P.W.3), Bheekam Singh (P.W.4), Ramrani (P.W.5), Sushila (P.W.6), Preeti (P.W.7), Guddi (P.W.8), Ramautar (P.W.9), Abhilakh (P.W.10), Gajendra Singh (P.W.11), A.K. Mudgal (P.W.12), Vijay Kant Sharma (P.W.13), Munnalal (P.W.14), Durg Singh (P.W.15), Shivnath Singh (P.W.16), R.N. Tripathi (P.W.17) and Rajendra Singh Tomar (P.W.18).

8. The Appellants examined Gajendra Singh (D.W.1), Radheshyam (D.W.2), Bheekam Singh (D.W.3), Dr. J. P. Choudhari (D.W.4), Jagrup Singh Sengar (D.W.5) and Sukhi @ Rita (D.W.6).

9. The Trial Court, by the impugned judgment and sentence, convicted all the three Appellants for the above mentioned offences.

10. Challenging the judgment passed by the Court below, it is submitted that the Appellant No.2 Babua @ Rajiv Singh was below the age of 18 years on the date of incident. This Court had directed the JJ Board to conduct an enquiry and accordingly report dated 12-3-2014 was submitted by JJB with a finding that the Appellant No.2 Babua @ Rajiv Singh was aged about 17 years, 5 months and 24 days on the date of incident. Accordingly, he was granted bail by this Court. It is submitted that although on the date of incident, Juvenile Justice Act, 1986 was in force and the age of a juvenile was 16 years, but after the Juvenile Justice Act 2000 came into force, the age of Juvenile was enhanced to 18 years and the Juvenile Justice Act, 2000 is applicable to all the pending cases, therefore, the Appellant No.2 Babua @ Rajiv Singh should be considered as minor on the date of incident. It is further submitted that so far as the case of the Appellant No.1 is concerned, there is ample evidence against him to prima facie show that he has committed the offence.

11. *Per contra*, the Appeal is vehemently opposed by the Counsel for the State.

12. Heard the learned Counsel for the parties.

13. Although the Counsel for the Appellants has not challenged the findings recorded by the Trial Court, but still this Court thinks it apposite to find out as to whether the death of Virendra Singh and Raghunandan was homicidal in nature or not?

14. Dr. A.K. Mudgal (P.W. 12) had conducted the Post-mortem of the dead bodies of the deceased and found following injuries on the dead

body of Virendra Singh :

Cloths : Corresponding cut marks

Injuries on Neck :

i. Front cut extensive 15 cm long x 10 cm broad x upto vertebral column. Underneath Trachea, Esophagus, Blood vessels of neck cut. Blood clot found in wound.

ii. Left side chest below nipple. Incised and penetrating wound 7 cm x 2.5 cm upto lung cavity.

iii. Right side of abdomen near umbilicus oblique penetrating wound 3 ½ x 1 ½ cm and cavity deep.

iv. Left of iliac region penetrating wound 3 x 1 ½ cm x intestine loop protruding.

v. Supra pubic area middle penetrating 4 x 2 x intestine loop protruding.

vi. Left Supra Scapular region incised wound 5 x 1 ½ x 1 cm wide

vii. On left side buttocks incised 3 x ½ x ½ cm in diameter.

The death is caused by shock, which is due to injuries to vital organs trachea, lungs, intestine etc. blood vessels neck. The nature is homicidal. Duration within 24 hours of Examination. The injuries described are antemortem, caused by sharp edged cutting and penetrating object.

The post-mortem report is Ex. P. 21.

15. Following injuries were found on the dead body of Raghunandan Singh :

Injuries

i. One rounded inverted wound left side of umbilicus 1 cm x 1 cm in diameter. Intestine loop small coming out from wound.

ii. Right chest middle anterior aspect incised and penetrating wound 5 cm x 2 cm depth upto lungs.

iii. Incised cut wound right arm near shoulder joint under the cut, arteries cut diameter 16x6x upto bone deep

iv. Exit wound of gun shot 12 cm x 12 cm diameter

everted on right side of lower back

The death is caused by shock which is due to injuries to intestine, lungs etc by gun shot and penetrating object. Homicidal in nature. Duration within 24 hours.

The post-mortem report is Ex. P.22.

16. From the post-mortem reports of Virendra Singh and Raghunandan Singh, it is clear that both of them have died a homicidal death.

17. The next question for consideration is that whether the Appellants are the author of the injuries or not?

18. As already pointed out, the Counsel for the Appellants have not challenged the findings of guilt recorded by the Trial Court.

19. Even then, for the purposes of clarity, it is observed that Ramrani (P.W.5), Sushila (P.W.6), Preeti (P.W.7) and Guddi (P.W.8) are the eye-witnesses. All the eye-witnesses have stated that after a gunshot was fired at Virendra, he ran inside the house of Abhilakh. The appellants dragged Virendra outside the house of Abhilakh and threw him on the ground in front of the house of Ravindra. Appellant-accused Babua @ Rajiv Singh pierced knife in the abdomen and chest region of Virendra whereas the Appellant Sanjay cut the neck of Virendra. Virendra died on the spot. Raghunandan was also present on the spot. After Virendra was killed. Raghunandan walked towards his house. At that time, Appellant-accused Rajendra instigated Sanjay to kill Raghunandan. Appellant-accused Sanjay fired a gunshot as a result Raghunandan fell on the ground. His one hand was cut by the Appellants and also caused injuries on his abdomen. It was further alleged that the buffaloes of Appellant-accused Rajendra were stolen and the dispute arose on that issue. For 10-12 days, Appellant-accused Rajendra was taking Virendra with him for searching out his buffaloes. Thereafter, an allegation was made that Virendra Singh

has stolen his buffaloes. A Panchayat was also convened in the village. Panchas had directed Virendra to give his buffaloes to Appellant-accused Rajendra. Therefore, buffaloes were given by Virendra to Appellant-accused Rajendra. But thereafter, another Panchayat was convened, and Appellant-accused Rajendra Singh had returned the buffaloes to Virendra, but also challenged that he would kill the entire family. The Dehati Nalishi, Ex. P.18 was lodged by Ramrani (P.W.5). Spot Map, Ex. P.19 was prepared. Utensils were also seized from the spot vide seizure memo Ex. P.7.

20. It is conceded by the Counsel for the Appellants, that nothing could be elicited from the cross-examination of the witnesses, which may make their evidence unreliable.

21. Thus, in absence of any challenge to the veracity of the evidence of Ramrani (P.W.5), Sushila (P.W.6), Preeti (P.W.7) and Guddi (P.W.8), it is held that the prosecution has succeeded in establishing that the Appellants had killed Virendra Singh and Raghunandan Singh by causing sharp, penetrating and gunshot injuries.

Whether the Appellant No.2 Babua @ Rajiv Singh was minor on the date of incident.

22. It is submitted that on the date of incident, Juvenile Justice Act, 1986 was in force and as per the definition of a juvenile, any child below the age of 16 years was a juvenile. The Appellant-accused Babua @ Rajiv Singh was 17 years 5 months and 26 days old on the date of incident. Although he was not juvenile in accordance with Act, 1986, but after the Juvenile Justice (Care and Protection of Children) Act, 2000, came into force, the Appellant-accused Babua @ Rajiv Singh, is to be

considered minor.

23. It is submitted that as per Explanation to Section 20 and Section 7-A of Act, 2000, the determination of juvenility of a juvenile shall be in terms of clause (I) of Section 2, even if the juvenile ceases to be so on or before the commencement of this Act and the provisions of Act, 2000 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. It is submitted that this provision has been considered by the Supreme Court in the case of **Hariram Vs. State of Rajasthan** reported in (2009) 13 SCC 211, **Ajay Kumar Vs. State of Madhya Pradesh** reported in (2010) 15 SCC 83, **Amit Singh Vs. State of Maharashtra and another** reported in (2011) 13 SCC 744, **Bharat Bhushan Vs. State of Himachal Pradesh** reported in 2013 Cr.L.R. (SC) 725, **Satyadeo Vs. Bhoorey Vs. State of U.P.** Reported in 2020 Cr.L.R. (SC) 986. It is submitted that the age of juvenility was enhanced from 16 years to 18 years by Act, 2000 and the Appellant-accused was below 18 years of age on the date of incident.

24. Heard the learned Counsel for the Appellants.

25. The Supreme Court in the case of **Devilal Vs. State of M.P.** in **judgment dated 25-2-2021** passed in **Cr.A. No. 989 of 2007** has held as under :

14. At the outset, we must deal with the issue of juvenility of Amrat Ram.

15. The incident in the present case had occurred in July, 1998 when the Juvenile Justice Act, 1986 ('the 1986 Act', for short) was in force. The age of juvenility for a male juvenile under the 1986 Act was 16 years. Since Amrat Ram was 16

years 11 months as on the date when the offence was committed, he was certainly not a juvenile within the meaning of 1986 Act. However, the age of juvenility was raised to 18 years in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the 2000 Act', for short). Section 20 of the 2000 Act dealing with proceedings pending against a juvenile on the date the 2000 Act came into force, states:-

“20. Special provision in respect of pending cases.- 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.- 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 (1) 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.”

16. Where an offender was more than 16 years of age on the day when the incident had occurred (and therefore was not a juvenile within the meaning of the 1986 Act) but was less than 18 years of age on the day of the incident, the question as to what extent benefit can be given in terms of the provisions of the 2000 Act, was considered by this Court in some cases. In **Mumtaz alias Muntyaz vs. State of Uttar Pradesh (now**

Uttarakhand) , after noting the earlier decisions, this Court observed:- “

18. The effect of Section 20 of the 2000 Act was considered in *Pratap Singh v. State of Jharkhand*⁴ and it was stated as under: (SCC p. 570, para 31) “31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence ‘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 came into force’ has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has 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, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.”

19. In *Bijender Singh v. State of Haryana* , the legal position as regards Section 20 was stated in the following words: (SCC pp. 687-88, paras 8- 10 & 12) “8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to the age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years

for both males and females. 9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes “juvenile” within the purview of the 2000 Act must be answered having regard to the object and purport thereof. 10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short “the Board”) which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations. ... 11.*** 12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.”

20. In *Dharambir v. State* (NCT of Delhi) the determination of juvenility even after conviction was one of the issues and it was stated: (SCC p. 347, paras 11-12) “11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (1) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. 12. Clause

(1) of Section 2 of the 2000 Act provides that “juvenile in conflict with law” means a “juvenile” who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the 2000 Act.”

21. Similarly in *Kalu v. State of Haryana* , this Court summed up as under: (SCC p. 41, para 21) “

21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile 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 the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.”

22. It is thus well settled that in terms of Section 20 of the 2000 Act, in all 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 would continue and be taken to the logical end subject to an exception that upon finding the juvenile to be guilty, the court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the 2000 Act. What kind of order could be passed in a matter where claim of juvenility came to be accepted in a situation similar to the present case, was dealt with by this Court in *Jitendra Singh v. State of U.P.*⁸ in the following terms: (SCC pp. 210-11, para 32) “32. A perusal of the “punishments” provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the appellant, advising or admonishing him [clause (a)] is hardly a “punishment” that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [clause (b)]. For the same reason, the appellant cannot be released on probation of good conduct under the care of a fit institution [clause (c)] nor can he be sent to a special home under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (d)]. The only realistic punishment that can possibly be awarded to the appellant on the facts of this case is to require him to pay a fine under clause (e) of Section 21(1) of the Juvenile Justice Act, 1986.”

23. In *Jitendra Singh v. State of U.P.*⁸, having found the juvenile guilty of the offence with which he was charged, in accordance with the law laid down by this Court as stated above, the matter was remanded to the jurisdictional Juvenile Justice Board constituted under the 2000 Act for determining appropriate quantum of fine. The view taken therein is completely consistent with the law laid down by this Court and in our opinion the decision in *Jitendra Singh v. State of U.P.*⁸ does not call for any reconsideration. The subsequent repeal of the 2000 Act on

and with effect from 15-1-2016 would not affect the inquiry in which such claim was found to be acceptable. Section 25 of the 2015 Act makes it very clear.”

17. Recently, in **Satya Deo alias Bhoorey vs. State of Uttar Pradesh**, this Court observed:-

“19. This position of law and principle in Mumtaz case³ was affirmed by this Court for the first time in Hari Ram v. State of Rajasthan² in the following words: (SCC p. 223, para 39) “39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.” 20. In light of the legal position as expounded above and in the aforementioned judgments, this Court at this stage can decide and determine the question of juvenility of Satya Deo, notwithstanding the fact that Satya Deo was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced. As Satya Deo was less than 18 years of age on the date of commission of offence on 11-12-1981, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act.”

18. It is thus clear that, even if it is held that Amrat Ram was guilty of the offence with which he was charged, the matter must be remitted to the jurisdictional Juvenile Justice Board for

determining appropriate quantum of fine that should be levied on Amrat Ram.

(Underline Supplied)

26. Thus, it is clear that the Appellant-accused Babua @ Rajiv Singh has to be treated as minor on the date of incident i.e., 30-7-1999 as he was below the age of 18 years on the said date.

27. From the record of the Trial Court, it is clear that the Appellant Babua @ Rajiv Singh had remained in jail from 4-11-1999 till 25-4-2004 as an undertrial and from 29-7-2011 till 8-1-2014 after his conviction. In view of Section 15(d) of Act, 2000, as well as in the light of the judgment passed by Supreme Court in the case of **Devilal (Supra)**, the matter can be remitted back to the JJB for determining the appropriate quantum of fine that should be levied on the Appellant Babua @ Rajiv Singh.

28. Accordingly, the conviction of Appellants Sanjay Singh and Babua @ Rajiv Singh for the above mentioned offences is hereby **affirmed**.

29. So far as the question of sentence is concerned, the minimum sentence for offence under Section 302 of IPC is life imprisonment, therefore, the sentence of Life Imprisonment (on two counts) as well as 5 years R.I. awarded by the Trial Court to the Appellant Sanjay Singh is hereby **affirmed**.

30. However, so far as the Appellant No. 2 Babua @ Rajiv Singh is concerned, **the sentence is set aside**. The matter is remitted back to the jurisdictional JJB for determining appropriate quantum of fine that should be levied on Babua @ Rajiv Singh. Let a decision in this regard be taken by jurisdictional JJB within a period of 6 months from today. The Appellant Babua @ Rajiv Singh is directed to appear before the jurisdictional JJB on 22-7-2022.

31. With aforesaid modification, the judgment and sentence dated 29-7-2011 passed by Additional Sessions Judge, Gohad, Distt. Bhind in S.T. No. 56 of 2000 is hereby **affirmed**.

32. The Appellant No. 1 Sanjay Singh is in jail. He shall undergo the remaining Jail Sentence.

33. The Appellant No.2 Babua @ Rajiv Singh is on bail. His bail bonds are discharged. He shall appear before the jurisdictional JJB on 22-7-2022 for determination of quantum of fine that should be levied on him.

34. Let a copy of this judgment be immediately provided to the Appellants, free of cost.

35. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance. The Trial Court is further directed to forward the record of the Trial to the jurisdictional JJB for necessary information and compliance.

36. The Appeal filed by Appellant No.1 Sanjay Singh fails and is hereby **Dismissed**, and Appeal filed by Appellant No.2 Babua @ Rajiv Singh is **Allowed** to the extent mentioned above.

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE