CASE NO.:
Review Petition (crl.) 1105 of 2000
Appeal (crl.) 4 of 2000

PETITIONER:
RAM DEO CHAUHAN @ RAJ NATH

Vs.

RESPONDENT:
STATE OF ASSAM

DATE OF JUDGMENT: 10/05/2001

BENCH:
R.P. Sethi

JUDGMENT:

SETHI,J.
L...I...T.....T.....T.....T.....T.....T.....T..J

Equating him with a beast, this Court [2000 (7) SCC 455] confirmed the death sentence awarded to the petitioner by the trial court and the High Court on proof of his having caused the death of four persons of a family including ladies and a child of two and a half years of age. Confirming the death sentence this Court had held:

"We are satisfied that the present case is an exceptional case which warrants the awarding of maximum penalty under the law to the accused/appellant. The crime committed by the appellant is not only shocking but it has also jeopardised the society. The awarding of lesser sentence only on the ground of the appellant being a youth at the time of occurrence cannot be considered as a mitigating circumstance in view of our findings that the murders committed by him were most cruel, heinous and dastardly. We have no doubt that the present case is the rarest of the rare requiring the maximum penalty, imposable under law."

Not satisfied with the murder of human beings, the petitioner has now tried to scuttle the process of law and thwart the course of Justice by resort to having recourse of seeking review of sentence on imaginative and concocted grounds. He has contended that as he was a juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, he could not be sentenced to any imprisonment much less the death sentence. In support of his contentions the learned counsel appearing for the petitioner has relied upon a host of authorities, wherein keeping in view the age of the accused and treating them as child, this Court had passed orders for setting those accused persons at liberty.

After issue of notice, a two-judge Bench of this Court held that the question of conviction of the petitioner under Section 302 of the IPC cannot be re-opened. Taking note of the contention of the learned counsel for the petitioner

that the accused was juvenile at the appropriate time and there was prohibition regarding the sentence to be imposed on him, the review petition was directed to be considered for that limited purpose only. As the question was important, the matter was referred to a larger Bench.

Heard the learned counsel appearing for the parties at length and critically examined the whole record in the case for appreciating the submissions made on behalf of the petitioner who has been awarded the death sentence.

This Court considered the scope of review and the limitations imposed on its exercise under Article 137 of the Constitution of India in Lily Thomas v. Union of India & Ors. [JT 2000 (5) SC 617] and held: "The dictionary meaning of the word "review" is the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi & Ors. Vs. Pradyunmansinghji Arjunsinghji [AIR (1970) SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S.Nagaraj & Ors.etc. Vs. State of Karnataka & Anr.etc. [1993 Supp. (4) SCC 595] held:

"Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Law Choudhury v. Sukhraj Rai [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:

'...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of

record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

This Court in M/s.Northern India Caterers (India) Ltd. Vs. Lt.Governor of Delhi [AIR 1980 SC 674] considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Sajjan

Singh v. State of Rajasthan, (1965) 1 SCR 933 at p.948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. G.L. Gupta v. D.N. Mehta, (1971) 3 SCR 748 at p.760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. ON Mohindroo v. Dist. Judge, Delhi, (1971) 2 SCR 11 at p.27. Power to review its judgments has been conferred on the Supreme Court by Art.137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. Chandra Kanta v. Sheikh Habib, (1975) 3 SCR 935."

Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

In A.R. Antulays case (supra) this Court held that the principle of English Law that the size of the Bench did not matter has not been accepted in this country. In this country there is a hierarchy within the Court itself where larger Benches overrule smaller Benches. This practice followed by the Court was declared to have been crystalised

as a rule of law. Reference in that behalf was made to the judgments in Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra [1985 (2) SCR 8], State of Orissa v. Titaghur Paper Mills [AIR 1985 SC 1293], Union of India v. Godfrey Philips India Ltd. [1985 Supp. (3) SCR 123. In that case the Bench comprising seven judges was called upon to decide as to whether the directions given by the Bench of this Court comprising five judges in the case of R.S. Nayak v. A.R. Antulay [AIR 1984 SC 684] were legally proper or not and whether the action and the trial proceedings pursuant to those directions were legal and valid. In that behalf reference was made to the hierarchy of Benches and practice prevalent in the country. It was observed that Court was not debarred from reopening the question of giving proper directions and correcting the error in appeal if the direction issued in the earlier case on 16th February, 1984 were found to be violative of limits of jurisdiction and that those directions had resulted in deprivation of fundamental rights of a citizen granted by Articles 14 and 21 of the Constitution of India. The Court referred to its earlier judgment in Prem Chand Garg vs. Excise Commissioner U.P., Allahabad [AIR 1963 SC 996], Naresh Shridhar Mirajkar v. State of Maharashtra [1966 (3) SCR 744 = AIR 1967 SC 1], Smt.Ujjam Bai v. State of U.P. [1963 (1) SCR 778 = AIR 1962 SC 1621] and concluded that the citizens should not suffer on account of directions of the Court based upon error leading to conferment of jurisdiction. The directions issued by the Court were found on facts to be violative of the limits of jurisdiction resulting in the deprivation of the fundamental rights guaranteed to the appellant therein. It was further found that the impugned directions had been issued without observing the principle of audi alteram partem.

It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

In the instant case, the review is sought on the ground that the petitioner was juvenile on the date of commission of the offence. According to the learned counsel appearing for the petitioner it is contended that as per school records the date of birth of the petitioner was 1.2.1977. He was 15 years 1 month and 7 days old on the date of occurrence. According to him the medical examination conducted on 23rd December, 1997 revealed that the accused was 15 years two months and 15 days old on the relevant date. It is contended that the petitioner could not have been tried by a court other than the juvenile court as per Sections 23 and 24 of the Juvenile Justice Act, 1986 (hereinafter referred to as "the Act"). As the trial was

concededly not conducted by a juvenile court, the whole proceedings were liable to be quashed. It is further contended that the trial court wrongly held the petitioner to be more than 20 years of age and the High Court erred in not deciding the question of age despite concession made by the counsel appearing for the petitioner. It is submitted that the counsel of the accused could not have sacrificed the interest of the accused and should have insisted for a finding from the court regarding his being a child or a juvenile. It is further submitted that the evidence on record requires re-examination as allegedly there are numerous inconsistencies and contradictions, the benefit of which is to go to the accused. Though not pleaded, yet the learned counsel argued that as the judgment was pronounced on the same day when the conviction was recorded, the mandate of Section 235 of the Code of Criminal Procedure (hereinafter referred to as "the Code") stood violated.

The grounds urged in the petition and at the Bar do not make out a case for review. In the guise of this petition, the petitioner has sought the re-appraisal of the whole evidence firstly to hold him not guilty and even if he is found guilty to give him the benefit of the Act. The contentions raised and the prayer made are admittedly beyond the scope of review. This petition can be dismissed only on this ground. However, being the case of death sentence, we have decided to consider the whole matter in depth to ascertain as to whether the petitioner is entitled to the benefit of the Act or not. We have further opted to consider that even if he is not proved to be juvenile, can he be given the benefit of his age on the ground of his allegedly being on the borders of the age contemplated under the Act for the purposes of awarding him the alternative sentence of imprisonment for life.

A perusal of the record shows that during the investigation, inquiry and trial, though represented by Senior Counsel, no plea was ever raised regarding the petitioner being juvenile and the case being governed by the provisions of the Act. Only at the time of arguments, plea regarding the accused being Juvenile was raised on the basis of defence evidence and the statement of Dr.B.C. Roy Medhi. However, such evidence appears to have been brought on record for the purposes of avoiding the death sentence and not for the applicability of the Act. Even in his application for grant of bail under Section 437 of the Code, the petitioner had not raised the plea of being under the age of 16 years entitling him bail under the first proviso to Sub-section (1) of Section 437 of the Code. Neither in his confessional statement, recorded by the Magistrate, nor in the memo of appeal filed in the High Court, such plea was ever raised.

The Act has been enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The object of the Act is to provide extraordinary procedure for offences alleged to be committed by a child/juvenile and punishment thereof. The Act is a complete Code in itself. "Juvenile" has been defined to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years and "delinquent juvenile" means a juvenile who has been found to have committed an offence. Section 5 of the Act authorises

the State government for constitution of juvenile courts for exercising the powers and discharging the duties conferred on such courts in relation to delinquent juvenile under the Act. Section 8 of the Act provides that when any Magistrate not empowered to exercise the power of a Board or a Juvenile Court under this Act is of the opinion that a person brought before him under any of the provisions of the Act is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceeding to the competent authority having jurisdiction over the proceeding. Such a power can be exercised by the Magistrate either on the complaint made to it or its own observations regarding the age of the accused appearing before him. In the absence of an order of a Magistrate, the competent authority under the Act cannot hold inquiry for the purpose of determining whether the person brought before it is a juvenile or not. In the instant case when the accused was produced before the Magistrate, powers under Section 8 were not exercised, obviously upon satisfaction of the Magistrate that the accused did not appear to be a juvenile. No plea appears to have been taken by the accused of his being a child/ juvenile either before the Magistrate or before the court, with the result that no inquiry, as contemplated under the Act, was ever held about his age. Even in the absence of an inquiry under the Act, the Sessions Court, after the case is committed to it has the power to make inquiry and determine the age of the accused if it considers it necessary in the interests of justice or a prayer is made in that behalf. The word "inquiry" appearing in sub-section (2) of Section 8 means inquiry under the Act and not inquiry under Section 2(g) of the Code.

Chapter III of the Code deals with the powers of the Criminal Courts. Section 26 specifies the courts by which various offences are triable. Section 27 deals with the jurisdiction of the criminal courts in case of juvenile. It provides that when any offence not punishable with death or imprisonment for life, committed by any person, who, at the date when he appears or is brought before the court is under the age of sixteen years, such accused can be tried by the court of Chief Judicial Magistrate or by any court specially empowered under the Children Act or any other law for the time being in force providing for the treatment, training or rehabilitation of the youthful offenders. The Act was enacted in the year 1986, without incorporating any amendment in Section 27 of the Code. A harmonious reading of the Act, particularly Section 8 and Section 27 of the Code would lead us to hold that whenever any delinquent juvenile, accused of an offence, irrespective of the punishment imposable by law, is produced before a Magistrate or a court, such Magistrate or the court, after it is brought to its notice or is observed by the Magistrate or the court itself that the accused produced before it was under the age of 16 years, shall refer the accused to the Juvenile Courts if the Act is applicable in the State and the courts have been constituted or otherwise refer the case to the Court of Chief Judicial Magistrate who will deal with the matter in accordance with the provisions of law. As noticed earlier, neither the investigating agency, nor the Magistrate or the Court or the accused felt the necessity of application of the provisions either of Section 27 of the Code or the provisions of the Act, particularly Section 8 thereof.

In the case of the petitioner, it appears that the

investigating officer, the Magistrate before whom the accused was produced, the Magistrate who recorded his confessional statement and the Sessions Court to whom the accused was committed did not find that the accused was a juvenile or a child. Such Magistrate and court were in a better position to form an opinion regarding the age of the accused who had admittedly appeared before them as they had the opportunity to see and observe him. There is no doubt in our mind that the plea of the petitioner being the juvenile is not only an after-thought but a concoction of his imagination at a belated stage to thwart the course of justice by having resort to wrangles of procedures and technicalities of law.

In a case where the accused had not raised the plea of his being a child/Juvenile either before the committal court, or the trial court, in appeal the High Court basing merely on an entry made in the statement recorded under Section 313 of the Code, wherein his age was mentioned as 17 year, concluded that he was a child. Setting aside the Judgment of the High Court in State of Haryana vs. Balwant Singh [1993 Supp. (1) SCC 409] this Court held:

"We have gone through the records carefully. It appears that the respondent took his trial before the trial court only on being committed by the Magistrate. It may be noticed that the age of the respondent before the trial court even at the stage of framing the charge was given at 17 years. Evidently, the Magistrate before whom the respondent was brought, was not satisfied that the respondent was a child within the definition of word 'child' under the Haryana Children Act. Admittedly, neither before the committal court nor before the trial court, no plea was raised on behalf of the respondent that he was a child and that he should not have been committed by the Magistrate and thereafter tried by the Sessions court and that he ought to have been dealt with only by the court of Juveniles. When it is not the case of the respondent that he was a child both before the committal court as well as before the trial court, it is very surprising that the High Court, based merely on the entry made in Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a 'child' within the definition of the Act on the date of the occurrence though there was no other material for that conclusion. This observation of the High Court, in our considered view, cannot be sustained either in law or on facts. Hence, we set aside that finding of the High Court that the respondent was a 'child'."

On the contrary, in the instant case, the Supervision Notes (dated 9.3.1992 to 12.3.1992) of Shri NM APS Additional Superintendent of Police, Morigaon, Assam, who was supervising the investigation, noted Ram Deo Chauhan accused to be of about 20 years of age. In the confessional statement of the accused recorded on 27th March, 1992 his age is mentioned as 20 years. Such age appears to have been either disclosed by the accused himself or observed by the court recording the statement and is no way near the age of a juvenile prescribed under the Act. In Exhibit 5, page 128, the Magistrate has recorded, "Statement of accused, aged about 20 years made in the Assamese language".

In his statement recorded by the trial court on 31st March, 1998, the petitioner gave or the court observed his age as 25 years 6 months as on 20th September, 1997, which

shows that he was more than 20 years of age on the date of occurrence, concededly not near or about the age of juvenile as defined under the Act.

Dealing with the arguments of the petitioner being a juvenile, though raised at a belated stage, the trial court dealt with the question of his age from paras 47 to 62 of its judgment and concluded:

"As such, in my view, he was not below 16 years of age at the time of alleged commission of the crime and he was not a juvenile to attract the provisions of Juvenile Justice Act, 1986."

The High Court is also shown to have looked into the statements of Firato Chauhan (DW 1) Satnarayan Jadav (DW 2) besides Dr. B.C. Roy Medhi court witness for the purposes of ascertaining the age of the accused. However, the statements of those witnesses were not discussed in detail in view of the statement of Mr. J.M. Choudhry, advocate stated to be renowned criminal lawyer, who represented the accused, that he was not challenging the findings of the trial court on the point of age of the accused. It appears, as usually happens during the course of the arguments in a court, that the evidence produced regarding the age of the accused in this case, was deliberated and realising the tentative views of the court on the point and in the light of preponderance of evidence, the learned defence counsel rightly conceded, "he was not challenging the findings of the Trial Court on the point of age of the accused". It is contended that despite such a statement of the defence counsel, the High Court ought to have discussed the statement of the witnesses regarding age and arrived at its own independent conclusions. We feel such a course, if adopted, would have been appreciable but if after noticing the statements of the witnesses, hearing arguments and in view of concession made by a counsel of stature, the High Court itself has not returned a finding, that would not render its judgment either illegal or be made a ground for holding that the accused was minor at the time of occurrence. Failure of the High Court to return a positive finding on the subject with regard to the age of the accused has necessitated the examination of whole evidence by us even at this stage of the proceedings.

I am also satisfied that the petitioner was not a juvenile within the meaning of the Act nor did he seriously claim to be a juvenile for the purposes of getting the benefit of Section 22 of the Act. The Judgment of the trial court and the High Court cannot be assailed on the ground of having been passed in violation of the mandate of law.

Despite holding that neither the petitioner was juvenile nor the provisions of the Act were applicable in the case, we examined this matter from another angle, i.e., to find out as to whether the petitioner was near or about the age of a juvenile for the purposes of ascertaining as to whether the death sentence can be substituted by imprisonment for life. We are of the considered opinion that the technicalities of law cannot come in the way of dispensing justice in a case where the accused is likely to be given the extreme penalty imposable under law. In deference to the judgment of this Court in Gopinath Ghosh v. State of West Bengal [1984 Supp SCC 228] and Bhola Bhagat v. State of Bihar [1997 (8) SCC 720] we have taken upon ourselves to

examine as to whether the accused was a child or was near or about the age of a juvenile for the purposes of ascertaining as to whether the death sentence can be substituted by imprisonment for life. The plea regarding the age of the accused was determined by the trial court which dealt with the evidence relating to the age of the accused before, it holding:

"DW1 Firato Chauhan was subjected to severe cross-examination and in the cross examination he admitted that Rajanth, the accused is his second son after Suraj Chauhan, his eldest son. There are three other sons after Ramdeo Chauhan. According to him, his present age is 70 years and the age of his only wife if 60 years. Two sons died and thereafter his eldest son Suraj was born. Every son and daughter born at an interval of three years. When he was 30 years old, his first child was born, that means, before 40 years his first child was born and his second child was born before 37 years. Suraj was born before 34 years. So, Ramdeo Chauhan must be bron befosre 31 years, that means, present age of Ramdeo Chauhan is 31 years. Furthermore, his first son Susraj has married before 10 years. He is now a father of one female child. Rajnath Chauhan is his second son, i.e. he was born after Suraj. Even if I hold that Suraj was 18 years at the time of his marriage, now he must be 28 years of age and Ramdeo Chauhan must be now 25 years of age. If he is now 25 years of age, at the time of alleged crime, he must be 19 years of age.

According to CW 1 Dr. Bhushan Chandra Roy Medhi, the present age of the accused was above 20 years. He also admitted that now-a-days, computerised method is used to ascertain the age of a person, but that facility is not available at GMCH. He further admitted that computerised method of ascertaining age is a recent invention in the medical science. Ultimately, he stated that accused cannot be below 20 years, but it can exceed by one year.

In Jayamala v. Home Secretary, Govt of Jammu and Kashmir in AIR 1982 SC 1247 (1982 Cr.L.J. 173) in paragraph 9, the Apex Court observed that - one can take judicial notice that the margin of year in age examined by a radiological examination is of two years on either side. In the case in our hand, CW 1 Dr. Bhusan Cahndra Roy Medhi categorically stated that the age of the accused cannot be below 20 years, but it can exceed by one year. If we apply the variation of margin of 2 years on lower side, the accused must be eighteen years at present. If he is eighteen years at present, at the time of alleged occurrence he must be twelve years of age which is absolutely impossible because according to evidence adduced by the defence his age was above fifteen years at the time of alleged occurrence. If we apply the variation of margin of two years on the other side, accused may be twenty three years at present. Then the accused cannot be below sixteen years of age at the time of alleged occurrence to attract the provisions of Juvenile Justice Act, 1986 as the alleged occurrence took place before six years.

DW Satya Narayan Yadav exhibited the school admission register and the relevant entry. But it seems that the entry in the school admission register is based on a transfer certificate issued by another school. As such, Mailoo Hindi School is not the first school where the accused first got admitted. Furthermore, from the cross

examination, it appears that registers of the school are not maintained properly. In the cross examination, prosecution find out many irregularities in maintaining the school register. This register did not contain any official label which seems to be torn away. There was no note regarding the age at the time of admission in register. He could not say on what basis date of birth was noted in the school admission register. There is no mention of the year in the admission here and there. He could not say who recorded the entry in the register. Moreover, the school register contains no serial page mark and as such there is scope of manipulating the record by inserting new sheet of papers. there is no seal and signature of the authority who supplied the register to the school. It seems that it was made and prepared at the school and DW 2 Sri Satya Narayan Yadav was not the headmaster at the relevant time. He is present headmaster and joined at school very recently. He has no personal knowledge regarding the exhibit as well as the age of the accused. In view of such evidence, the school admission register cannot be said to be authentic and original document of the age of the accused. Furthermore, Rajasthan High Court in Smt. Tara Devi, Appellant v. Smt. Sudesh Chaudhary, respondent reported in AIR 1998 Rajasthan 59 held that - Date of birth - Entries in school record - Made by Headmasters in discharge of their official duties - can be regarded as pieces of circumstantial evidence only within meaning of s. 114 and not as direct evidence of date of birth. Furthermore, in this case, the DW 2 the present headmaster did not make the entries nor the entries were made within his knowledge. But age of the boy was entered into the register on basis of a Transfer Certificate produced at the time of his admission in that school. The source of the age recorded in the original school is not known to us in order to ascertain whether the information furnished at the time of first admission in the school was correct or not and in his respect, no evidence has been adduced. Furthermore, if the admission of the father in his cross examination regarding the age of the accused is accepted, entries in the school certificate cannot be said to be correct particulars of the age of the accused. In order to hold a school register or a school certificate as the correct document regarding the age of a person, the school certificate must be related to the accused and the entries therein must be correct in their particulars. There is no dispute that the school certificate relates to the accused, but entries therein cannot be said to be correct in view of the evidence of DW 2, the headmaster of Mailoo Hindi High School and the admission of DW 1, the father of the accused in his cross examination.

The prosecution also adduced evidence regarding the age of the accused.

PW 4 Rani Kanta Das stated in his deposition that when he first met the accused in the house of his younger brother in the month of November, 1991 he asked him about his address, father’s name and also his age. He stated to him that he was 20 years of age. According to PW 4, he seems to be a grown up boy aged about 20 years at that time. But that portion of the evidence was not challenged by defence while cross examining PW 4. In my view, this controversy of age is the outcome of after thought when it was seen that prosecution almost succeeded in establishing the case against the accused.

As per Ext. 25, the accused Ramdeo Chauhan alias Rajnath Chauhan stated before I/O that he was 20 years of age when his statement was recorded by I/O on 8.3.92.

If he was 20 years in 1991, he must be now above 26 years which almost tallies with the age ascertained from DW 1, the father, in his cross examination, Furthermore, the manner in which he committed the murder in a pre-planned manner and without hesitation by chopping one after another with a spade, which has been vividly described by him 9n his confession made before the Judicial Magistrate, I think such type of pre plan, cold blooded, ghastly, gruesome murder cannot be possible for a boy below 16 years of age. It is quite natural on the part of the father and the defence to suppress the actual age to save the accused from the penalty likely to be awarded for the brutal murder as provided U/S 302 IPC. If such type of incredible evidence is allowed, in many cases, the accused will come up with such plea and thereby rendering our justice system ineffective and also eroding the credibility of the system. I am firm in my view that accused must be minimum 25 years of age at present."

After examining the evidence led before the trial court in this regard I find no reason to disagree with the reasoned conclusions arrived at by the trial court.

It is not disputed that the Register of Admission of students relied upon by the defence is not maintained under any statutory requirement. The author of the Register has also not been examined. The register is not paged at all. Column No.12 of the register deals with "age at the time of admission". Entries 1 to 45 mention the age of the students in terms of the years, months and days. Entry No.1 is dated 25th January, 1988 whereas Entry No.45 is dated 31st March, 1989. Thereafter except for Entry No.45, the page is totally blank and fresh entries are made w.e.f. 5.1.1990, apparently by one person upto Entry No.32. All entries are dated 5.1.1990. The other entries made on various dates appear to have been made by one person though in different inks. Entries for the years 1990 are upto the Entry No.64 whereafter entries of 1991 are made again apparently by the same person. Entry No.36 relates to Raj Nath Chauhan, son of Firato Chauhan. In all the entries except Entry No.32, after 5.1.1990 in column No.12 instead of age some date is mentioned which, according to the defence is the date of birth of the student concerned. In Entry 32 the age of the concerned student has been recorded. In column No.12 again in the entries with effect from 9.1.1992, the ages of the students are mentioned and not their dates of birth. The manner in which the register has been maintained does not inspire confidence of the court to put any reliance on it. Learned defence counsel has also not referred to any provision of law for accepting its authenticity in terms of Section 35 of Evidence Act. The entries made in such a register can not be taken as a proof of age of the accused for any purpose.

Referring to the testimony of Dr.Bhushan Chandra Roy Medhi, CW1, the learned counsel for the accused has tried to make out a mountain out of mole. It appears that as per the direction of the court dated 20th December, 1997, the petitioner accused was examined by a Board of doctors to ascertain his age. In their report Exhibit C dated

23.12.1997 the Board opined "on the basis of physical examination and radiological investigation of Sh.Raj Nath Chauhan @ Ram Deo Chauhan, we are of the opinion that the age of the individual at present is above (20) years" If the accused was of atleast 20 years of age on 23.12.1997, his date of birth can be held to be near or about 23rd December, 1977. In that way, taking his minimum age to be 20 years at the time of his examination, he can be held to be of the age of about 15 years and 10 months. As the doctors were categoric in terms that he was above the age of 20 years on the date of examination, it can safely be said that he was more than 16 years of age on the date of occurrence. In reply to a question the doctor Sh.Bhushan Chandra Roy Medhi had stated that in my opinion the age of the accused cannot be more than 21 years. In reply to a question by the prosecution he had stated that "in my opinion the accused definitely has not attained the age of 25 years". In reply to the question put by the defence, the witness said "it is not a fact that he was of 18 or 19 years of age at the time of my examination. In this case the age of the accused cannot be below 20 years, it can exceed one year but cannot be below 20 years. It is not a fact that the accused was below 20 years at the time of my examination".

Relying upon a judgment of this Court in Jaya Mala v. Home Secretary, Government of Jammu & Kashmir & Ors. [1982 (2) SCC 538], the learned defence counsel submitted that the court can take notice that the marginal error in age ascertained by radiological examination is two years at either side. The aforesaid case is of no help to the accused inamsuch as in that case the court was dealing with the age of a detenu taken in preventive custody and was not determining the extent of sentence to be awarded upon conviction of an offence. Otherwise also even if the observation made in the aforesaid judgment are taken note of, it does not help the accused in any case. The doctor has opined the age of the accused to be admittedly more than 20 years and less than 25 years. The statement of the doctor is no more than an opinion. the court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon text books, on medical jurisprudence and texicology while determining the age of an accused. In this vast country with varied latitude, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.

From the evidence produced and the material placed before the courts below, there is not an iota of doubt in my mind to hold that the petitioner was a child or near or about the age of being a child within the meaning of the Juvenile Justice Act or the Children Act. He is proved to be major at the time of the commission of the offence. No doubt, much less a reasonable doubt is created in the mind of the Court, for the accused entitling him the benefit of a lesser punishment. It is true that the accused tried to create a smoke screen with respect to his age but such efforts appear to have been made only to hide his real age and not to create any doubt in our mind. The judicial

system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses, particularly at the stage of special leave petition. The law insists for finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakens the faith of the common man in the justice dispensation system has to be discouraged.

After committing the crime of murder of four innocent persons, the petitioner cannot be permitted to resort to adopt means and tactics or to take measures which, if accepted or condoned, may result in the murder of the judicial system itself. The efforts made by the accused by way of this petition, are not likely to advance the interests of justice but on the contrary frustrate it.

Learned counsel for the petitioner again made a futile attempt to challenge the verdict of the trial court under the cloak of technicalities and submitted that as the sentence and conviction were recorded on the same day, the judgment of the trial court was against the law. In support of his contentions he relied upon the judgments of this Court in Muniappan v. State of Tamil Nadu [1981 (3) SCC 11], Malkiat Singh & Ors. v. State of Punjab [1991 (4) SCC 341], State of Maharashtra v. Sukhdev Singh & Anr. [1992 (3) SCC 700].

Sub-section (2) of Section 235 of the Code provides that if the accused is convicted, the judge shall unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law. In Muniappan's case (supra) this Court held that the obligation to hear the accused on the question of sentence is not discharged by putting formal questions to him. The judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. It was the duty of the court to cast aside the formalities of the court scene and approach the question of sentence from a broad, sociological point of view. In Malkiat Singh's case (supra) this Court observed that hearing contemplated under Section 235(2) of the Code is not confined merely to oral hearing but also is intended to afford an opportunity to the prosecution as well as the accused to place facts and materials relating to various factors on the question of sentence and if desired by either side to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty. It was further observed that sufficient time must be given to the accused or the prosecution on the question of sentence, to show the grounds on which the prosecution may plead or the accused may show that the maximum sentence of death may be the appropriate sentence or the minimum sentence of life imprisonment may be awarded as the case may be. It was further observed that the sentence awarded on the same day of finding guilt was not in accordance with law.

In both the aforesaid judgments the amendment made in Section 309 of the Code was not taken note of. By Criminal Procedure Code Amendment Act, 1978, a proviso was added to

sub-section (2) of Section 309 to the effect that "Provided also that no adjournment would be granted for the purposes only of accepting the accused person to show cause against the sentence proposed to be imposed upon him".

In Sukhdev Singh's case (supra) this Court while dealing with Section 309(2), third proviso and Section 235(2) of the Code and after referring to its earlier decisions in Allauddin Mian & Ors. v. State of Bihar[1989 (3) SCC 5] and Malkiat Singh's case, (supra) held:

"This proviso must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section. That section emphasises that an inquiry or trial once it has begun should proceed from day to day till the evidence of all the witnesses in attendance has been recorded so that they may not be unnecessarily vexed. The underlying object is to discourage frequent adjournments. But that does not mean that the proviso precludes the court from adjourning the matter even where the interest of justice so demands. The proviso may not entitle an accused to an adjournment but it does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice as enshrined in Section 235(2) of the Code. Expeditious disposal of a criminal case is indeed the requirement of Article 21 of the Constitution; so also a fair opportunity to place all relevant material before the court is equally the requirement of the said Article. Therefore, if the court feels that the interest of justice demands that the matter should be adjourned to enable both sides to place the relevant material touching on the question of sentence before the court, the above extracted proviso cannot preclude the court from doing so."

The mandate of the Legislature is clear and unambiguous that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. In a case punishable with death or imprisonment for life, there is no difficulty for the court where the sentence proposed to be imposed is alternative sentence of life imprisonment but if it proposes to award the death sentence, it has discretion to adjourn the case in the interests of justice as held in Sukhdev Singh's case. I have no doubt in holding that despite the bar of third proviso to sub-section (2) of Section 309, the Court, in appropriate cases, can grant adjournment for enabling the accused persons to show cause against the sentence proposed on him particularly if such proposed sentence is sentence of death. We hold that in all cases where a conviction is recorded in cases triable by the Court of Sessions or by Special Courts, the court is enjoined upon to direct the accused convict to be immediately taken into custody, if he is on bail, and kept in jail till such time the question of sentence is decided. After the sentence is awarded, the convict is to undergo such sentence unless the operation of the sentence awarded is stayed or suspended by a competent court of jurisdiction. Such a course is necessitated under the present circumstances prevalent in the country and is in consonance with the spirit of law. A person granted bail has no right to insist to remain at liberty on the basis of the orders passed in his favour prior to his conviction.

Upon consideration of all relevant circumstances and in

view of the settled position of law, I have no doubt in my mind that the present Review Petition is without merit, the grounds mentioned therein have been concocted and carved out for escaping the rigours of law and the sentence imposed upon the accused by well considered judgments of the trial court, High Court and this Court. The review petition is accordingly dismissed.