

Court No. - 27

Case :- CRIMINAL REVISION No. - 494 of 2013

Revisionist :- Om Prakash

Opposite Party :- State of U.P.

Counsel for Revisionist :- R.P. Mishra, Sushil Kumar Singh

Counsel for Opposite Party :- Govt. Advocate, Alok Singh, Uma Kant Pandey

Hon'ble Subhash Vidyarthi J.

(Application Nos. 80656 & 80654 of 2020)

1. The applications seek recall of the order dated 05.07.2019 whereby the revision was dismissed in default, as well as condonation of delay in filing the application for recall of the order dated 05.07.2019.
2. It has been stated in the affidavits filed in support of the applications that clerk of the counsel for the revisionist had inadvertently omitted to mark the case in the cause list and, therefore, the revisionist's counsel could not appear when the case was taken up and the revision was dismissed for non-prosecution. As the counsel was not aware about the listing of the case, the fact of its dismissal could not be known to him, which has resulted in a delay in filing application for recall of the order.
3. Cause shown in the affidavits for delay in filing the recall application as well as for non-appearance of the counsel for the revisionist is sufficient. Accordingly, both the applications are allowed.
4. The revision is restored to its original number.

(Order on Revision)

1. Heard Sri Sushil Kumar Singh Advocate, the learned counsel for the revisionist, Sri Anurag Verma, the learned A.G.A. I for the State and

Sri Himanshu Shukla holding brief of Sri Alok Singh, the learned counsel for the opposite party No.2.

2. By means of the instant revision filed under Section 53 of the Juvenile Justice (Care & Protection of Children) Act, 2000, the revisionist has assailed validity of the order dated 28.09.2013 passed by the Additional Sessions Judge IV, Sultanpur in Sessions Trial No.398 of 2000, State versus Paanchu & Others, arising out of Crime No.410 of 2000 under Sections 323, 504, 302 IPC, Police Station Koorebhar, District Sultanpur, whereby the revisionist's plea that he was a juvenile at the time of the incident and he should be tried accordingly, has been rejected.
3. An interim order was passed in the revision on 24.10.2013 providing that the trial Court may proceed with the trial, but the judgment will not be delivered. The revision was dismissed for want of prosecution on 05.07.2019 and the interim restraint on delivery of judgment in trial also came to an end. The learned Counsel for the revisionist has made a request for urgent hearing of the revision as the trial Court has fixed 26.02.2024 for delivery of judgment. Accordingly, the case was taken up out of its turn and submissions of the learned Counsel were heard immediately after restoration of the revision.
4. Case Crime No. 410 of 2000 was registered at 02:15 a.m. on 13.08.2000 against 4 persons, including the revisionist, stating that the accused persons are pattidars of the complainant, i.e. the complainant and the accused persons are descendents of a common ancestor. Due to a dispute that had started by some children having urinated in a lane, the accused persons started assaulting the complainant's father and grand-father. The revisionist was armed with a pistol and the other persons were carrying sticks. The complainant, his mother and several other persons reached the spot upon hearing the hue and cry. The revisionist fired a shot with the intention to kill the complainant's father. The bullet hit the complainant's father on his neck and he died resultantly. The complainant caught hold of the revisionist whereupon the latter hit on his face with the butt of the pistol, ran inside his house

and locked himself up from the inside. The other accused persons had assaulted the complainant and other persons with sticks and the revisionist had also suffered some injuries from sticks.

5. The police submitted a charge sheet under Sections 302, 504 and 325 I.P.C. The trial Court framed charges under Sections 302/34, 323/34 and 504 I.P.C. The trial proceeded and 10 prosecution witnesses were examined. The statements under Section 313 Cr.P.C. were recorded on 31.03.2010, wherein the revisionist told his age to be 28 years. DW-1 was examined on 09.10.2012. After closure of defence evidence, additional statement under Section 313 Cr.P.C. was recorded on 15.01.2013 and in that statement also, the revisionist again told his age to be 28 years.
6. On 26.06.2013, the revisionist filed an application stating that in his statement under Section 313 Cr.P.C. recorded on 15.01.2013, he had stated his age by reducing it to 28 years. He had not received any education in any school and as per age told by himself in the Court, he was juvenile on the date of the incident, i.e. on 12.08.2000 and he should be tried accordingly.
7. The revisionist was examined by a Medical Board, which gave its report dated 24.08.2011 stating that the revisionist had claimed his age to be 28 years but the board was of the opinion that the revisionist was aged about 30 years.
8. The prosecution opposed the application on the ground that the incident in question giving rise to the case took place on 12.08.2000, the revisionist was arrested on 13.08.2000 and he was medically examined on the same day. His medical examination report dated 13.08.2000 mentions his age to be 25 years. The Doctor who had examined him had been examined as PW-3 and he stated that at the time of the incident the accused was aged 25 years. As per the evidence available on record, the revisionist was major on the date of the incident and he had filed the application for causing delay in disposal of the proceedings.

9. The complainant also opposed the application stating that the revisionist had got prepared a false report regarding his age whereas he was aged 36 years.
10. The trial Court examined the Gram Panchayat Adhikari as CW-1, who produced a copy of the Parivar Register as Exhibit – 1, which mentions the year of birth of the revisionist to be 1976 and the entry in Parivar Register was made long ago. The trial Court held that even if the date of birth of the revisionist is taken to be 31.12.1976, i.e. the last date of the year, at the time of the incident the age of the revisionist would be 23 years 7 months 11 days.
11. Assailing the validity of the order passed by the trial Court, the learned counsel for the revisionist has submitted that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 was applicable at the relevant time and it provided that where no educational certificate was available in support of his date of birth and there was no birth certificate issued which may certify the date of birth of the revisionist, his age has been determined through the medical examination conducted by a board of Doctors, which has opined his age to be about 30 years as on 24.08.2013, from which the revisionist's age at the time of incident come about 17 years.
12. Relying upon a decision of Hon'ble Supreme court in the case of **Pawan Kumar versus State of Uttar Pradesh & Others : 2023 SCC OnLine SC 1492**, the learned counsel for the revisionist has submitted that in the aforesaid circumstances, the medical report should be accepted and he should be treated as a juvenile at the time of the incident and he should be tried accordingly.
13. The learned counsel for the revisionist has also relied upon the judgment of the Hon'ble Supreme court in the case of **Pratap Singh versus State of Jharkhand & Another : AIR 2005 SC 2731**, which has been relied on in Pawan Kumar (supra).
14. *Per contra*, Sri Anurag Verma, the learned A.G.A. I has relied upon a decision of the Hon'ble Supreme Court in the case of **State of Jammu**

15. Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 reads as under:

“7A. Procedure to be followed when claim of juvenility is raised before any Court-

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

16. From a reading of Section 7A, it becomes obvious is that whenever a claim of juvenility is raised, an inquiry has to be made and such inquiry would take place by receiving evidence which would be necessary, so as to determine the age of such person.
17. The procedure to be followed for the determination of age is provided under Rule 12(3)(b) of the 2007 Rules, which reads as:

“12. Procedure to be followed in determination of age.—(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and,

while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

18. Sub-clause (3) of the aforesaid Rule clearly mandates that while conducting an inquiry about the juvenility of an accused, the Juvenile Justice Board would seek evidence by obtaining the matriculation or equivalent certificates and in the absence whereof the date of birth certificate from the school first attended and in absence whereof the birth certificate given by a corporation or a Municipal authority or a Panchayat. It is made clear by sub-clause (b) that only in the absence of the aforesaid three documents, medical information would be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. Thus, it is only in the absence of the aforesaid documents that the Juvenile Justice Board can ask for medical information/ossification test.

19. In **Ashwani Kumar Saxena v. State of M.P.**, (2012) 9 SCC 750, the Hon’ble Supreme Court held that: -

“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the

court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

* * *

41. This Court in Babloo Pasi v. State of Jharkhand (2008) 13 SCC 133 held, in a case where the accused had failed to produce evidence/certificate in support of his claim, medical evidence can be called for. The Court held that:

“22. ... The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”

This Court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to redetermine the age of the accused.”

(Emphasis supplied)

20. In the present case, the Gram Panchayat Adhikari has produced a copy of the Parivar Register which mentions the year of birth of the revisionist to be 1976 and the entry in Parivar Register was made long

ago. This document is prepared and kept during the normal course of business. As per the law laid down in **Ashwani Kumar Saxena** (Supra) the court is not expected to go behind this document to examine the correctness of the entry, more particularly, when there is no allegation that the Parivar Register has been fabricated or manipulated. In these circumstances, there was no need for medical examination of the revisionist for ascertaining his age.

21. It is also relevant to note of the provisions contained in Sections 35 and 114 of the Evidence Act, which provide as follows: -

“35. Relevancy of entry in public record or an electronic record], made in performance of duty.—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

* * *

114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

* * *

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to illustration (e)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (f)—the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

22. Thus the entry made in the Parivar register stating the year of birth of the revisionist, which was made by a public servant in the discharge of his official duty, is itself a relevant fact for deciding the age of the revisionist and it has to be presumed that the official act of preparation of Parivar Register was performed in a regular manner and the entries in the register are correct. It has to be presumed that the common course of business has been followed in preparation, maintenance and production of the Parivar register.
23. Where the accused is an uneducated person and he has no educational certificate, the court has to obtain the birth certificate given by a corporation or a municipal authority or a panchayat, which cannot be an affidavit, but it has to be a certificate **or document**. The question of obtaining medical opinion from a duly constituted Medical Board would arise only if the abovementioned documents are unavailable.
24. In **Abuzar Hossain v. State of W.B.**, (2012) 10 SCC 489, the Hon'ble Supreme Court summarized the legal position in this regard in the following words: -

“39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima

facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh and Pawan these documents were not found prima facie credible while in Jitendra Singh the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. *An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.*

39.5. *The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.*

39.6. *Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."*

(Emphasis supplied)

25. In **Rishipal Singh Solanki v. State of U.P.**, (2022) 8 SCC 602 it was held that: -

“33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3) (a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

** * **

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

** * **

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

(Emphasis supplied)

26. In **State of Jammu & Kashmir (Now U.T. of Jammu & Kashmir) & Others vs Shubam Sangra**: 2022 SCC OnLine SC 1592, it was held that: -

“72. Thus, it is no doubt true that if there is a clear and unambiguous case in favour of the juvenile Accused that he was a minor on the date of the incident and the documentary evidence at least prima facie establishes the same, he would be entitled to the special protection under the Juvenile Justice Act.

However, when an Accused commits a heinous and grave crime like the one on hand and thereafter attempts to take the statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an Accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of a common man in the institution entrusted with the administration of justice. As observed by this Court in Parag Bhati (supra), the benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus be extended to only such cases wherein the Accused is held to be a juvenile on the basis of at least prima facie evidence inspiring confidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged Accused who is involved in grave and serious offence which he is alleged to have committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.”

(Emphasis supplied)

27. When we examine the facts of the present case in light of the law laid down by the Hon’ble Supreme Court in the above mentioned cases, what we find is that the offence was committed at about 10:00 p.m. on 12.08.2000. The F.I.R. was lodged at 02:15 a.m. on 13.08.2000, i.e. after about 4 hours since the occurrence, alleging that the accused persons and the complainant are descendents of a common ancestor and due to a petty dispute, the revisionist had fired a shot from a pistol with intention to kill the complainant’s father which hit him on his neck, due to which he died. The revisionist is alleged to have hit the complainant with the butt of his pistol when the latter had caught hold of him and thereafter the revisionist had ran inside his house and locked himself up from inside. The offence was undoubtedly the most heinous offence and as the parties are descendents of a common ancestor, there appears to be no reasonable probability of misidentification of the miscreant and also regarding knowledge of the age of the revisionist to the complainant and his family members.
28. The trial Court framed charges under Sections 302/34, 323/34 and 504 I.P.C. The trial proceeded and 10 prosecution witnesses were

examined. The statements under Section 313 Cr.P.C. were recorded on 31.03.2010, wherein the revisionist told his age to be 28 years. DW-1 was examined on 09.10.2012. After closure of defence evidence, additional statement under Section 313 Cr.P.C. was recorded on 15.01.2013 and in that statement also, the revisionist told his age to be 28 years. Thereafter he filed the application dated 26.06.2013 taking the plea of juvenility and he has himself stated in the application that in his statement under Section 313 Cr.P.C. recorded on 15.01.2013, he had stated his age by reducing it to 28 years.

29. Although there is no bar in a plea of juvenility being raised at a belated stage, when such a plea is raised belatedly in a case involving commission of murder of a relative, the Court has to deal with the matter with more care and caution and has to take into consideration all the relevant facts and circumstances. The age of the revisionist told by himself at time of his medical examination conducted on 13.08.2000, i.e. immediately after the incident and his arrest, was 25 years. There can be difficulty in ascertaining whether a person is juvenile or not from a mere physical appearance when his age is somewhere around 18 years but a 25 years old man can be reasonably assessed to be a major from his appearance. Had the revisionist claimed himself to be a juvenile at that stage, his age correct could have been ascertained immediately, but he chose not to claim juvenility.
30. In his statement recorded under Section 313 Cr.P.C. on 31.03.2010, he claimed himself to be aged 28 years and the revisionist has stated in the application claiming himself to be a juvenile that in his statement under Section 313 Cr.P.C. recorded on 15.01.2013, he had stated his age by reducing it to 28 years. This clearly establishes that the revisionist is trying to avoid the necessary legal consequences of alleged commission of an offence of murder by stating his age by reducing the same. This important admission of the revisionist made in the application cannot be ignored.

31. The revisionist was arrested on 13.08.2000 and he was medically examined on the same day. His medical examination report dated 13.08.2000 mentions his age to be 25 years. The Doctor who had examined him has been examined as PW-3 and he stated that at the time of the incident the accused was aged 25 years.
32. The Gram Panchayat Adhikari has produced a copy of the Parivar Register as Exhibit – 1, which mentions the year of birth of the revisionist to be 1976 and the entry in Parivar Register was made long ago. The trial Court held that even if the date of birth of the revisionist is taken to be 31.12.1976, i.e. the last date of the year, at the time of the incident the age of the revisionist would be 23 years 7 months 11 days.
33. The term “birth certificate given by a corporation or a municipal authority or a panchayat” occurring in Rule 12 (3) (a) (iii) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 need not be interpreted in a hyper-technical manner so as to mean and include a document titled “birth certificate” only. The entry of the revisionist’s year of birth made in the Parivar register by a public servant in the discharge of his official duty, shall be taken to be a certificate of his birth of the person in that year. As the birth year is certified by a document prepared by the Panchayat, there was no occasion to go to the next step of medical examination for ascertaining the revisionist’s age and the claim of determination of age on the basis of medical report has rightly not been accepted by the trial Court.
34. The Gram Panchayat Adhikari has produced a copy of the Parivar Register which mentions the year of birth of the revisionist to be 1976 and the entry in Parivar Register was made long ago. This document is prepared and kept during the normal course of business. The entry made in the Parivar register stating the year of birth of the revisionist was made by a public servant in the discharge of his official duty, is a certificate of the year of birth of the revisionist and it has to be presumed that the official act of preparation of Parivar Register was

performed in a regular manner and the entries in the register are correct. It has to be presumed that the common course of business has been followed in preparation, maintenance and production of the Parivar register.

35. As per the law laid down in **Ashwani Kumar Saxena** (Supra) the court is not expected to go behind this document to examine the correctness of the entry, more particularly, when there is no allegation that the Parivar Register has been fabricated or manipulated. As there is a public document certifying the year of birth of the revisionist, there is no occasion for conducting a medical examination for ascertaining his age.
36. In **Pawan Kumar v. State of U.P.**, 2023 SCC OnLine SC 1492, a formal plea of juvenility was supported by the Scholar Register of National Inter College, Barabanki which recorded the accused's date of birth as 05.07.1980 which meant that on the date when the offence was committed, the accused would be 15 years, 6 months, and 26 days old. However, during cross-examination the clerk of the College who had produced the Scholar Register, admitted that the entry was made on the basis of a transfer certificate issued by Purva Madhyamik Vidhyalaya, which was not placed on record. Further, the Gram Panchayat Officer was examined who produced the Family Register of the appellant where D.O.B. of the appellant was recorded as 1975. The day and month of his birth were not mentioned in this Family Register. In any case, as per the Family Register of the Gram Panchayat, the appellant would be around 20 years of age at the time of the commission of the offence. In view of this contradiction, a bone ossification test was conducted under the supervision of the Chief Medical Officer of District Hospital, Barabanki where the age of the appellant was recorded as approximately 19 years. The trial Court concluded that the benefit of juvenility cannot be extended to the appellant and he was directed to face the trial. In appeal, the Hon'ble Supreme Court held that the admitted position is that the appellant had not completed his matriculation at the time of the incident in the year

1995 and therefore the only evidence he could place before the authorities was the copy of the admission register of National Inter College and the transfer certificate of the college, which had recorded his date of birth to be 05.07.1980. The appellant took admission in National Inter College, Barabanki on 25.07.1995 and thereafter since he could not pay his tuition fee, his name was removed as a student from the college register on 30.12.1995. The date of birth which was registered in the said school was 05.07.1980. In the latest enquiry conducted by the Additional Sessions Judge, Barabanki dated 28.09.2022, the appellant had produced relevant certificates of all three schools he had attended. In view of the aforesaid facts and circumstances of this case, the Hon'ble Supreme Court accepted the age on the basis of the educational documents. The Hon'ble Supreme Court further observed that: -

“38. Further, it must also be kept in mind that the medical opinion based on Bone Ossification Test, is not entirely accurate. This Court in the case of Vinod Katara v. State of U.P., 2022 SCC OnLine SC 1204 has held the following:

*60. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual characteristics such as the growth rate of bones and skeletal structures can affect the accuracy of this method. This Court has observed in Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194, and Jyoti Prakash Rai v. State of Bihar, (2008) 15 SCC 223 : (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test irrespective of whether the ossification test of multiple joints is conducted. **The courts in India have accepted the fact that after the age of thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt.**”*

33. Although **Pawan Kumar** (Supra) was decided in view of the factual background where the educational certificates were available to prove the age of the accused, which is not the position in the present case,

the aforesaid observation made by the Hon'ble Supreme Court regarding the value and effect of a medical test report is relevant for the present case and this does not help the revisionist at all.

34. It appears that the revisionist is attempting to take the statutory shelter under the guise of being a minor and it is the Court's duty to protect the confidence of a common man in the institution entrusted with the administration of justice by rejecting such a frivolous claim.
35. On the basis of the entire material available on record, which has been discussed above, the revisionist's claim of juvenility is lacking in credibility and it has rightly been rejected by the court.
36. There is no merit in the revision and the revision is **dismissed**.

(Subhash Vidyarthi J.)

Order Date - 23.02.2024

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