

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH**

Criminal Revision No.2645 of 2013

Date of Decision: 28.11.2017

Ranjit Singh @ Rana

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gagneshwar Walia, Advocate,
for the petitioner.

Mr. Sandeep Mann, AAG, Punjab.

Mr. P. S. Ahluwalia, Advocate,
for the complainant.

AMOL RATTAN SINGH, J.

By this revision petition, the petitioner, Ranjit Singh @ Rana, has challenged the order of the learned appellate Court (Additional Sessions Judge), Hoshiarpur, dated 08.07.2013, dismissing his appeal filed against the order of the learned Sub Divisional Judicial Magistrate, Garhshankar, dated 15.04.2013, by which the present petitioners' application seeking that he be declared juvenile, was dismissed.

2. The petitioner was arrested by the police on the allegation that he alongwith two other accused had committed the murder of two persons and had committed a robbery, also destroying the evidence with regard to both the offences.

The petitioner is stated to have been arrested on 23.02.2012 and produced in Court alongwith another accused, Rajvir Singh, and is stated to have got recorded his age as 19 years with the police.

On 03.04.2012, the finger prints of the accused were taken before the learned Sub Divisional Judicial Magistrate, Garhshankar, and at that time also the petitioner is stated to have got recorded his age as 19 years in the Court.

As recorded in the impugned order of the learned Additional Sessions Judge, even on 05.04.2012, when one Inspector Raj Kumar had prepared the certificate of identification of the accused persons, the petitioner again recorded his age as 19 years.

3. In view of the above, when the report under Section 173 Cr. P.C. was eventually submitted to the competent Court, his age was given therein as 19 years, he being charged with the commission of offences punishable under Sections 460, 201 and 120-B IPC.

Thereafter however, the petitioner filed an application before the learned Sub Divisional Judicial Magistrate on 31.07.2012, contending therein that as per his 5th standard examination certificate, issued by the Punjab School Education Board, his date of birth was 28.12.1995 and therefore, the occurrence in which he was alleged to be an accused, having taken place on 19.02.2012 as per the prosecution, he was less than 17 years of age and was therefore a juvenile. A copy of the aforesaid certificate was annexed alongwith the application.

It was therefore prayed in the application that an inquiry be conducted by the Court of the SDJM, and he be declared a juvenile and sent up for trial to the Juvenile Justice Board, Hoshiarpur.

4. Notice having been issued in the application by the learned SDJM, it is stated to have been 'hotly contested' by the State, on the ground that it was firstly not maintainable and further, was not based on actual facts, as the petitioner himself had given his age to be 19 years, both before the police, as also before the Court when his finger prints were taken.

It was further contended that the 5th standard examination certificate could not be the basis of proof of the date of birth, as it was only information derived from the school record, with no authenticity attached to it.

5. Having considered the aforesaid contentions on behalf of the petitioner as also the prosecution, the learned Magistrate firstly held that the 5th standard examination certificate issued by the Education Board could not be taken as 'authenticated proof' of the date of birth, especially when the offence committed was "double murder with robbery and destruction of evidence" qua both.

Yet further, the SDJM held that the certificate or "even a positive proof of the certificate of registration of birth ipso facto should not be the foundational basis to declare a person juvenile more particularly when such a juvenile is accused of having committed a heinous offence particularly when days or few months separated him from adulthood".

Consequently, the application of the present petitioner, Ranjit Singh, was dismissed; though vide the same order dated 15.04.2013, the application of his co-accused, Rajvir Singh, was allowed, as his (Rajvir Singhs') date of birth, as per his school leaving certificate, after the 5th standard examination, was found to be 7.10.96 (thereby making him about 15 years and four and half months old on the date of occurrence, i.e. on 19.02.2012).

6. The petitioner having appealed against that order, the learned

Additional Sessions Judge, vide the impugned order dated 08.07.2013, dismissed the appeal, essentially on the reasoning that the petitioner himself had got recorded his age as 19 years before the police on the date of his arrest, i.e. on 23.02.2012, and again at the time when an identification certificate prepared on 05.04.2012, as also before the Court of the SDJM on 03.04.2012, when his finger prints were taken.

7. An argument having been raised before that Court that the appellant (present petitioner) had not been given an opportunity to lead evidence regarding his age, the appellate Court held that his statement was recorded on 03.07.2012, when he stated that he was less than 18 years of age at the time of occurrence, producing a photocopy of his primary school certificate, with no other evidence. Hence, the argument on behalf of the prosecution was accepted, to the effect that with the accused having been granted an opportunity to record his statement, as also to produce a photocopy of the certificate, the inquiry conducted by the Court of the SDJM was sufficient and no further inquiry was called for.

Consequently, the appeal was dismissed, vide the impugned order.

8. Before this Court, alongwith the grounds of revision, again the copy of the 5th standard examination certificate issued on 07.09.2007, by the Punjab School Education Board, has been annexed as Annexure P-4, showing the petitioners' date of birth to be 28.12.1995, with a copy of the middle standard examination certificate issued on 15 May, 2010 also annexed as Annexure P-5, and a certificate issued by the Headmistress (wrongly shown as Headmaster) of the Government Primary School, Block Dera Baba Nanak, annexed as Annexure P-6, stating to the effect that the date of birth of Ranjit Singh was 28.12.1995 as per the school record, and that his Admission number

was 539 as per the record of the Government Primary School, Behlolpur.

Similarly, a certificate of the Headmaster/Headmistress of the Government Middle School, Behlolpur, is also annexed as Annexure P-7, giving the same date of birth, with the Admission no.322, as per the school record.

9. Subsequently, vide an order dated 21.01.2014 passed by a co-ordinate Bench, "the material" in respect of Admission no.539 in Government Primary School, Behlolpur, was directed to be placed on record, upon which an application was filed, bearing CRM no.7939 of 2014, seeking to place on record copies of three documents, the first of which is seen to be a copy of the admission withdrawal register of the aforesaid school, where again the copy bears the date of birth as 28.12.1995.

Annexure P-10 is seen to be an application form of one Kuldeep Singh, dated 01.05.2006, seeking admission in the Government Primary School, Behlolpur,

Though the 'vernacular version' of the aforesaid document (a photocopy of the document in Gurmukhi) also shows, on the obverse side thereof, that admission was being sought for Kuldeep Singh, however, on the reverse side, the students' name is given as Ranjit Singh, with his date of birth shown to be 28.12.1995.

Similarly, Annexure P-11 is shown to be a copy of the birth certificate of the petitioner, shown to be registered on 13.1.95, with the date of birth to be shown as 28.12.1995, the photocopy (vernacular) carrying the stamp of the Head-Teacher, Government Primary School, Behlolpur, Block Dera Baba Nanak.

10. That application (CRM no.7939 of 2014) was allowed on 11.03.2014, with the copies of the aforesaid documents taken on record.

Thereafter, yet another application was filed, bearing CRM no.9814 of 2014, seeking to place on record as Annexures P-12 and P-13, certificates issued by the Principal, New Life Academy, Behlolpur, dated 18.03.2014, and an admission and withdrawal register of the said school.

Both the aforesaid documents again give the date of birth of the petitioner to be 28.12.1995, with the first document (sought to be placed on record as Annexure P-12), stating to the effect that Ranjit Singh took admission in the aforesaid academy in the 'nursery class', on 02.04.2000, where he continued to study till Class 4, leaving the academy on 31.03.2005.

The said document was also taken on record vide an order dated 28.03.2014.

11. Thereafter, notice in the revision petition itself was issued, with this Court having passed an order on 21.11.2014 staying the passing of the final order in the trial on-going against the petitioner, and also recording vide the same order, that time had been sought by the State counsel to address arguments on whether a school certificate of the 5th standard can be relied upon to declare a person as juvenile or not.

12. The matter thereafter having been adjourned time and again on the request of one counsel or the other, eventually it came up for hearing on 17.03.2017, with learned counsel for the complainant in the FIR pointing to the discrepancy in the copy of the birth certificate annexed, Annexure P-11, to the effect that though the date of birth is shown to be 28.12.1995, the date of registration is shown to be 13.01.1995.

In view of the above, this Court had directed that the original

register of the school in which the petitioner first enrolled for education, i.e. the New Life Academy, Behlolpur, be summoned through its Principal. Upon the said register having been summoned, as recorded in the order dated 03.05.2017, a cutting in the entry on the admission of the petitioner was noticed by this Court, to the effect that though it was shown to be 02.04.2000, the numeral 4 had been written over the numeral 0.

13. Learned counsel for the petitioner also having pointed to the petitioners' date of birth from certificates produced in this Court, stated to be education certificates, the State had been directed to determine the authenticity of the certificates of the primary and middle school education of the petitioner, by joining the father of the petitioner in the investigation, and thereafter determining the authenticity of the certificate from the Punjab School Education Board.

14. On the next date of hearing, i.e. on 18.05.2017, a statement was made by learned State counsel, on instructions from the Assistant Sub Inspector present to assist him in the matter, that the petitioners' mother had in fact handed over the three certificates to the investigating officer only one day earlier.

At that stage, Mr. Ahluwalia, learned counsel for the complainant, had submitted that as per Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'the Rules'), at the first instance only the Matriculation Examination Certificate or equivalent certificate (if available), are to be seen to determine as to whether the person claiming to be juvenile at the time of the alleged commission of the crime was a juvenile or not, and in the absence of such certificates, it is the birth certificate that is to be seen, obtained from a school that the person first

attended, not being a play school, and only thereafter, if none of the aforesaid documents was available, the birth certificate issued by the Municipality/Panchayat is to be taken into consideration.

Learned counsel submitted that therefore, a photocopy of the Class V Examination Certificate, and the Middle School Examination Certificate, cannot be taken into consideration at all to determine the age of the person claiming to be a juvenile.

15. To counter the aforesaid arguments, learned counsel for the petitioner had relied upon a judgment of a co-ordinate Bench of this Court, passed in Sushil Kumar v. State of Haryana 2013 (2) RCR (CrL.) 932, wherein it was held that even a Middle Standard certificate issued by the Education Board, can be taken into consideration to determine the juvenility of an accused, in terms of Rule 12 (3) (a) (i) and (ii).

16. On the aforesaid arguments having been made by learned counsel on both sides, the directions issued earlier by this Court to the State, to verify the authenticity of the certificates, were kept in abeyance, with the original certificates handed over to learned counsel for the petitioner.

17. Thereafter, on subsequent dates, arguments were addressed by both learned counsel, essentially on the issue of whether or not an inquiry is mandatory on the basis of any document more than an affidavit, in terms of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, and whether, in the present case, the inquiry conducted by the learned SDJM on the basis of what was produced by the petitioner himself, as also on the basis of his testimony, was sufficient inquiry or not.

18. Mr. Gagneshwar Walia, learned counsel for the petitioner, relied upon various judgments of the Supreme Court to submit that even school

leaving certificates have been accepted to be proof of juvenility, despite a medical examination stating to the contrary (reference specifically made to paragraph 10, Ranjeet Goswami v. State of Jharkhand and another 2014 (1) SCC (Cri) 490).

Other judgments that learned counsel for the petitioner relied upon, are:-

- (i) Balkar Singh v. State of Punjab 2005 (1) RCR (Criminal) 576;
- (ii) Ashu v. State of Punjab 2015 (7) RCR (Criminal) 46;
- (iii) Shah Nawaz v. State of U.P. and another AIR 2011 (SC) 3107;
- (iv) Ashwani Kumar Saxena v. State of M.P. AIR 2013 (SC) 553;
- (v) Abuzar Hossain v. State of West Bengal 2012 (10) SCC 489;
- (vi) Dr. Subramanian Swamy and others v. Raju through Member Juvenile Justice Board and another AIR 2014 (SC) 1649;
- (vii) Abdul Razzaq v. State of Uttar Pradesh 2015 (15) SCC 637.

19. From *Shah Nawazs'* case (supra), Mr. Walia referred to the following, as recorded in paragraph 20 (Law Finder Citation DocId # 267164):-

“20. We are satisfied that the entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-O-Kalan and recorded by

the Board. The date of birth of the appellant has also been recorded as 18.06.1989 in School Leaving Certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said school at S. No.1382 which have been proved by the statement of the Principal of that school recorded before the Board. Apart from the clerk and the Principal of the school, the mother of the appellant has categorically stated on oath that he appellant was born on 18.06.1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18.06.1989, hence her statement corroborated his academic records which clearly depose his date of birth as 18.06.1989. Accordingly, the appellant was a juvenile on the date of occurrence that is 04.06.2007 as alleged in the FIR dated 04.06.2007.”

Paragraph 10 in *Ranjeet Goswamis'* case, reads as follows:-

“10. We, therefore, find no reason to reject the school leaving certificate. If that be so, as per the ratio laid down in *Ashwani Kumar Saxena* (supra) there is no question of subjecting the accused to a medical examination by a medical board. Going by the school leaving certificate since the appellant was a juvenile on the date of occurrence, he can be tried only by the JJ Board. Consequently, the order passed by the High Court is set aside and that of the Sessions Judge, Dumka is restored. The appeal is allowed, as stated above.”

(Law Finder Citation DocId # 480730)

Thus, learned counsel for the petitioner submitted that even though Rule 12 of the Rules stipulates that only matriculation or equivalent certificates, or in their absence, the date of birth certificate from the school first attended, are to be the certificates upon which the age of an accused is to

be determined for the purpose coming to a conclusion as to whether he is juvenile or not, the Supreme Court has accepted even a school leaving certificate and a detailed marks sheet as sufficient proof of the date of birth given therein. He, therefore, submitted that in the present case, the petitioner having relied upon his 5th standard certificate, issued by a State established Education Board, the learned SDJM was bound to further inquire into the matter.

20. Mr. Walia next referred to *Ashwani Kumar Saxenas'* case, wherein the Supreme Court laid down as to what constitutes essential procedure (and what does not) to determine the question of juvenility.

Mr. Walia pointed out that the appellant before the Supreme Court in that case had contended that he was 17 years, 11 months and 25 days old on the date of the occurrence, as per the certificate issued by the Board of Secondary Education, Madhya Pradesh, and therefore was entitled to be tried as a juvenile, in respect of the offence alleged to have been committed by him, punishable under Section 302 of the IPC and Section 27 of the Arms Act.

The widow of the victim had raised an objection that no evidence had been adduced to show that the entry made in the school register was correct and that normally parents do not give the correct date of birth in the admission register, and yet further, that as even as per physical appearance, the accused therein appeared to be well over 21 years of age, his application for declaring him to be juvenile should be dismissed.

The father and mother of the accused in that case had also both testified before the Court of the Magistrate that he was born on 24.10.1990, as was contended in the application, and therefore was not of the age of majority.

However, the Chief Judicial Magistrate still had an ossification

test conducted, as also a dental test, on the basis of which the accused was held to be more than 21 years of age on the date of occurrence

The appeal against the order of the CJM was dismissed by the learned Additional Sessions Judge in that case also, as was the revision petition before the Madhya Pradesh High Court.

21. The Supreme Court, expressing 'unhappiness' over the manner in which all the Courts had dealt with the claim of juvenility, then laid down, after discussing the entire law on the subject, as follows:-

“27. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Courts or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression 'court shall make an inquiry', take such evidence as may be necessary” and “but not an affidavit”. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12 (2) uses the expression “*prima facie*” and “on the basis of physical appearance” or “documents, if available”. Rule 12 (3) uses the expression “by seeking evidence by obtaining”. These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and

age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J. Act, but Section 2 (y) of the J. J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.”

(Law Finder Citation DocId # 392713)

22. Thereafter, their Lordships went on to examine the meaning the words inquiry, enquiry, investigation and trial, as defined in the Code of Criminal Procedure and held as follows:-

“32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. “Age determination inquiry” contemplated under section 7A 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 need 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 need 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 above mentioned 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.

35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J. J. Act also draws a presumption of the age of the Juvenility on its determination.”

(Law Finder Citation DocId # 392713)

It was further observed, in paragraph 37, that trial Courts in several cases go on to examine a large number of witnesses on either side, including calling for ossification tests and dental test reports, even when a matriculation certificate or equivalent certificate and a date of birth certificate from the first and last attended school are available. Having observed so, the the opinion of the Apex Court was expressed thereafter, as reads hereinunder:-

“45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence

of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”

(Law Finder Citation DocId # 392713)

Having held as above, the appellant in that case (Ashwani Kumar Saxenas' case) was held to be juvenile.

23. Mr. G. S. Walia, learned counsel for the petitioner, next referred to the judgment in *Abuzar Hossains'* case (supra), wherein the issue of when a claim of juvenility should be recognised and sent for determination was referred to a larger Bench and the following principles on that question, were laid down by the Supreme Court:-

“39. Now, we summarise the position which is as under:

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.”

(Reference:SCC Citation)

24. Mr. Walia then referred to the judgment in *Dr. Subramanian Swamy and others v. Raju and another* (supra), first drawing attention to the argument raised in the first petition by the petitioner before the Supreme Court, that having regard to the object behind the enactment, the Juvenile Justice Act has to be read down to understand that the true test of juvenility is not in the age but in the level of mental maturity of the offender.

It was further contended by the petitioner that the Act is not enacted to apply to serious or heinous crimes committed by a juvenile, especially as the Indian Penal Code stipulates that a child below 7 years of age is not criminally liable for any action of his, and a child between 7 to 12 years of age is also absolved of any criminal liability if he is judged to be not old enough to understand the nature and consequences of his conduct.

Mr. Walia then pointed to what was discussed by their Lordships on the aforesaid contention (reference made by learned counsel from paragraphs 42 to 44 in the aforesaid judgment), that reads as follows:-

“42. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the “reading down” doctrine can be summarised as follows. Courts must read the legislation literally in the first instance. If on such

reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality.

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43. In the present case there is no difficulty in understanding the clear and unambiguous meaning of the different provisions of the Act. There is no ambiguity, muchless any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them. A class of persons is sought to be created who are treated differently. This is being done to further/effectuate the views of the international community which India has shared by being a signatory to the several conventions and treaties already referred to.

44. Classification or categorisation need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorisation are identifiable and distinguishable and the categorisation made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner, differences inter se and within the under 18 category may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical accuracy will not exist in any categorization. But such precision and accuracy is not what Article 14 contemplates. The above principles have been laid down by this Court in a plethora of judgments -----.”

(Law Finder Citation DocId # 537393)

25. Thereafter having discussed the law on the issue, their Lordships eventually dismissed the appeal filed by the petitioners as also the writ petition filed by the parents of the victim of the crime.

26. Hence, learned counsel for the petitioner submitted that that being so, the petitioner is entitled to an inquiry into his juvenility and the benefit thereof if he is found to be juvenile and as such, the learned Courts below wrongly dismissed the application and the appeal, whereas they should actually have held a proper inquiry into the issue.

27. Last, he referred to the judgment in *Abdul Razzaqs'* case, wherein after conviction of the petitioner by the trial Court, of an offence punishable under Section 302, his appeal was dismissed by the High Court, with the Special Leave Petition also dismissed and the Review Petition filed thereafter having also been dismissed by the Supreme Court.

Mr. Walia submitted that even in such a situation, upon finding that the petitioner before the Supreme Court had been found to be juvenile, the orders dismissing the SLP and the Review Petition were recalled and even while maintaining his conviction for the commission of the offence, he was ordered to be released from custody, the maximum period of sentence imposable under the Juvenile Justice Act having already been undergone by him.

28. In view of what has been contended by him, by reference to the aforesaid judgments, Mr. Walia submitted that the learned Sub Divisional Judicial Magistrate was enjoined upon to hold a proper inquiry and only thereafter come to a conclusion as to whether the petitioner is juvenile or not.

Consequently, he submitted that the matter be remitted to that Court for conducting an inquiry.

29. *Per contra*, Mr. P. S. Ahluwalia, learned counsel appearing for the complainant, i.e. the son of the two deceased persons, made the following arguments:-

- (i) That the order of the Magistrate before whom the petitioner appeared would not be interfered with, even on first principles, on account of the fact that the petitioner was physically present before that Court so as to enable that Court to determine both, his physical appearance and his maturity of mind, which would also be a determination of his age in terms of Rule 12 (2) of the Juvenile Justice (Care and Protection) Rules, 2007;
- (ii) That the present petitioner himself appeared before the Court and disclosed his age to be 19 years, and also subjected himself to finger printing, without raising any objection, on three occasions;
- (iii) that the nature of the offence in the present case, i.e. the murder of two old persons, with the intention of robbing them and destruction of evidence, would not entitle the petitioner to a technical advantage of being a juvenile, especially after disclosing his age to be 19 years, with his level of maturity of mind having been assessed by the learned Magistrate;
- (iv) that the petitioner, at this stage of revision before this Court, cannot be allowed to set up a new case by relying upon education certificates which he never relied upon either before the Magistrate or the appellate court; and lastly,
- (v) that a Class V certificate even issued by the Education Board concerned, cannot be treated to be a certificate equivalent to the matriculation certificate, in terms of Section 12 (3) (a) (i) of the Act.

30. Mr. Ahluwalia also relied upon various judgments in support of his contentions, as follows:-

- (i) **Nagendra @ Wireless v. State of Uttar Pradesh**
2015 (3) Apex Court Judgments (SC) 700;
- (ii) **Mukarrab Etc. v. State of U.P. 2017 (1) RCR (Criminal)**
103;
- (iii) **Parag Bhati (Juvenile) through Legal Guardian-**
Mother-Smt. Rajni Bhati v. State of Uttar Pradesh and
Anr. AIR 2016 (SC) 2418; and
- (iv) **Gaurav Kumar @ Monu v. State of Haryana 2015 (6)**
RCR (Criminal) 36.

31. Thus, as per learned counsel for the complainant, the learned Magistrate already having conducted an inquiry on the basis of evidence led before him, no further inquiry is required and therefore this petition deserves to be dismissed and the petitioner proceeded against in the on going trial, taking him to be an adult.

Mr. Ahluwalia also submitted that nothing extra can be read into the statute, i.e. the rules of 2007, with Rule 12 specifying that evidence with regard to the age of an accused would only be determined by either a matriculation or an equivalent certificate if available, and in the absence thereof the date of birth certificate from the school first attended, and in the absence of that also, the birth certificate issued by a Corporation, a Municipal Authority or a Panchayat and lastly, in the absence of all the aforesaid three certificates, by seeking medical opinion of a duly constituted medical board.

The contention is that if the intention of the legislature had been that a Class-V certificate, even issued by a Board, can be treated to be sufficient proof of age, there would have been no prohibition on the legislature to have stated so either in sub-clauses (i) or (ii), of sub-rule 3 (a) of the aforesaid rules.

Hence, he submits that even if the document relied upon by the petitioner had been an original Class V certificate (with it actually being just a photostat copy thereof), it could not have been looked at as proof of age, either by the trial Court, or even by this Court in revisional jurisdiction.

This is of course other than the fact that there was no original certificate produced and only a photocopy thereof was relied upon, in the 9 months that the application of the petitioner, seeking to be declared a juvenile, remained pending before the trial Court.

In this context, he again referred to the judgment in *Nagendra @ Wireless*, to submit that, in fact, the judgment relied upon by counsel for the petitioner, in *Ranjeet Goswamis'* case (supra), has been held not to be good law in *Nagendra @ Wireless'* case, wherein their Lordships held that the statutory provision, i.e. Rule 12 (3) (a) (i) of the Rule not having been (specifically) considered, a school leaving certificate cannot be “a relevant consideration to determine the juvenility of an accused/convict”.

32. Mr. Ahluwalia thereafter laid specific stress on what has been held by the Supreme Court in *Parag Bhatish'* case (supra), to submit that where even *prima facie* evidence of the minority of the accused is not established and the offence committed is grave and heinous, he cannot be permitted to “take statutory shelter under the guise of being a minor”.

The relevant extract of that judgment, as pointed to by learned counsel for the petitioner, is reproduced hereinbelow:-

“26. 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 below the age of 18 years on the date of the incident and the documentary evidence at least *prima facie* proves the same, he would be entitled to the special protection under the JJ Act. But

when an accused commits a grave and heinous offence and thereafter attempts to take 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 common man in the institution entrusted with the administration of justice.

27. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence 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 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.

28. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain (supra), an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

(Reference: Law Finder Citations DocId # 765541)

33. Learned counsel for the complainant also reiterated from the judgment already cited by him in *Mukarrabs'* case (supra), that seeing the gravity of the crime, it would not just be at the stage of imposing a punishment

on a person held guilty of a crime, that his juvenility has to be considered, but even at the time of conducting an enquiry into such juvenility that the gravity of the crime has to be gone into, especially if the accused is not of such a juvenile age as 15 years or below, so as to make his alleged act condonable on the ground of age alone.

He submitted that this would especially apply in the present case, where the petitioner himself had disclosed his age to be 19 years on three different occasions.

34. In rebuttal, Mr. Walia, learned counsel for the petitioner, firstly pointed to that part of the aforesaid judgment, in which it has been held that if there is any doubt on the correctness of the date of birth, then an inquiry for determination of his age is permissible, as has also been held in *Abuzar Hossains'* case (supra).

35. He further submitted that even though the new Act, i.e. the Juvenile Justice (Care and Protection of Children) Act, 2015, provides otherwise, Section 25 of that Act also specifically stipulates that any proceedings continuing under the provisions of the Act of 2000 would continue as if the new Act had not been passed. Hence, he submitted that any reliance upon the provisions of the new Act by the learned counsel for the complainant, is meaningless.

36. In this context, he also cited judgments of the Supreme Court in **Shri Ganesh v. State of Tamil Nadu and another** 2017 (1) RCR (Cr.) 556 and **Becha Ram Acharya and another v. State of Jharkhand** All SCR (Cr.) 2017 287.

37. Learned Assistant Advocate General, Punjab, has essentially reiterated what has been submitted by learned counsel for the complainant.

38. Having considered the aforesaid arguments, as also the orders of

the Courts below, the two questions that are required to be decided in this revision petition are, firstly, whether the photocopy of the primary school certificate produced by the petitioner before the learned SDJM, alongwith his application seeking that he be declared a juvenile, can be stated to constitute *prima facie* evidence of his juvenility, thus enjoining upon that Court to conduct an inquiry into that issue in terms of Rule 12 of the Rules.

Secondly, whether the testimony of the petitioner before that Court, seen with the fact that he himself is stated to have disclosed his age as 19 years at the first instance, can be said to be sufficient inquiry into the issue, again in terms of the same rule, which according to learned counsel for the complainant actually does constitute sufficient inquiry.

39. As regards the first question, of whether a photocopy of a primary school certificate produced by the petitioner before the SDJM was sufficient *prima facie* evidence or not, to his juvenility, without hesitation it has to be held that simply a photostat copy of what is contended to be the original primary school certificate (contending further that it was issued by the Punjab School Education Board), very obviously cannot be held to be evidence of the juvenility of the petitioner.

Therefore, if seen only in that context, what has been observed in paragraph 26 of *Parag Bhatish*' case (supra), that an accused committing a grave and heinous offence cannot take statutory shelter under the guise of being a minor, unless at least the documentary evidence *prima facie* proves the same, would seem to apply to the petitioners' case, against him, especially as he is contended to have stated even before the Court at the first instance that he was 19 years of age.

In fact, looking at the fact that two elderly persons, husband and

wife, have been murdered, with the petitioner and his co-accused charged with those killings, the conscience of this Court would not permit that, if the petitioner is found guilty of having committed the offence, as per the evidence led before the trial Court, he should be allowed to get away with simply three years imprisonment for such heinous offences, on such flimsy evidence.

However, what obviously this Court cannot ignore is that in *Ashwani Kumar Saxena*, even while holding that the Court is not to conduct an investigation or go into a fishing inquiry, it is bound to follow the procedure laid down in the Rules, i.e. Rule 12 of the Rules of 2007, and if a matriculation certificate or its equivalent, is not available, then it needs to obtain the date of birth certificate from the school first attended, by the accused, other than a play school (paragraph 34 of the Law Finder Citation).

This has to be read with the fact that in *Abuzar Hossains'* case, it has been held in paragraph 39.3 thereof (SCC Citation), that what material would *prima facie* satisfy the Court and/or is 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 that may be sufficient to raise a presumption on juvenility. Further, it has been held therein that “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”.

40. That brings us in fact to the second question that arises in this petition, as to whether the testimony of the petitioner, to the effect that he is a juvenile, and the photostat copy presented by him of what is contended to be his primary school certificate, constitutes procedure sufficient enough to be considered to be an inquiry by that Court, also in view of the fact that the

petitioner at first is stated to have disclosed his age to be 19 years, when first produced before that Court.

41. Again, to repeat, though in fact, it shocks the conscience of this Court that a person, if eventually held guilty by due process, of having committed two murders of elderly people, should be allowed to get off with a light sentence, yet equally to the conscience of this Court, are the statutory provisions governing the case of the petitioner (i.e. before the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015), by which he has to be given the benefit of the procedure prescribed, even in terms of *Ashwani Kumar Saxenas'* case.

42. Sections 7 and 7A of the Act of 2000, as also Rule 12 of the Rules of 2007, are reproduced hereinunder:-

“7. Procedure to be followed by a Magistrate not empowered under the Act.-(1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or a child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under subsection (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

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.”

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“12. **Procedure to be followed in determination of Age.** (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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.

(4) If the age of a juvenile or child or the juvenile in conflict with law is

found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

(Section 64 referred to in Section 7-A, pertains to a juvenile undergoing a sentence at the time of commencement of the Act of 2000).

43. Thus, Section 7A (1) stipulates that whenever a claim of juvenility is raised before any Court, the Court is bound to make an inquiry and “take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person -----”.

Thereafter, Rule 12 (3) stipulates that in every case concerning a child or juvenile, the age determination inquiry shall be conducted “by seeking evidence by obtaining -” a matriculation or equivalent certificate, if available, and in the absence thereof the date of birth certificate from the school first attended and in the absence of that too, thereafter, the date of birth certificate given by a municipality or a Panchayat.

Hence, a plain reading of the aforesaid Rule 12 (3), would show that in conducting an inquiry, the first competent court is to obtain evidence in the form of the aforesaid certificates and eventually, in the absence of any of

them, then seek the opinion of a Medical Board.

44. This is to be seen in the light of the fact that in *Abuzar Hossains'* case, in paragraph 39.2, it has been specifically held that 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. However, the initial burden has to be discharged by the person who claims juvenility.

Hence, we again come back to the same question, of whether in the face of a photostat copy of a primary school certificate of what is contended to be an original primary school certificate issued by a State Education Board, would that initial burden on the accused-applicant be seen to have been discharged, thereby then shifting the burden to the court where the application was made by him, to obtain evidence to satisfy itself whether the certificate was genuine or not.

45. Though undoubtedly, as argued very strenuously by learned counsel for the complainant (son of the victims), that the photostat copy of a certificate not being either a matriculation certificate or a certificate of birth obtained from the school of first attendance by the petitioner-accused-applicant, the initial burden was also not discharged, this Court finds it difficult to accept that contention, inasmuch as, if a person has not passed his matriculation examination, and produces the next best education qualification certificates, also issued by the same Board as would normally issue a matriculation certificate, would it not enjoin upon the court of first instance to at least conduct an inquiry to determine the authenticity of the certificate, by summoning it from the Board itself?

Again no doubt, the initial burden was in fact on the petitioner to

have actually produced the original certificate and not just a photostat copy thereof, for the learned SDJM to have come to a conclusion as to whether it was a genuine or a fabricated document, but what cannot be lost sight of by this court, as has also been observed by the Supreme Court in paragraph 39.5 of *Abuzar Hossains'* judgment, that the court where the plea of juvenility is raised for the first time, has to 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 a hypertechnical approach, and the persons who are entitled to get the benefits of the Act, get such benefits.

Hence, the petitioner contending to be only 16 years and 2 months of age at the time of the commission of the offence, whether or not his contention was correct, or was only a ruse to try and get out of a trial by a regular court and instead be sent to the Juvenile Justice Board, is something which was needed to be determined by the court of first instance, by summoning evidence in terms of Rule 12 (3) of the Rules of 2007, which stipulates calling for evidence in the process of conducting an inquiry, though obviously such evidence would only be to the extent of the document relied upon by the applicant-accused.

46. The reason for calling for the original primary school certificate before the competent court (i.e. the Judicial Magistrate concerned), would also be seen to be necessary in view of what was held in *Shah Nawazs'* case (supra), wherein, in the absence of a Class 10 certificate, the date of birth in the marks sheet was accepted to be correct, though a reading of that judgment would show that it was a marks sheet of the Class 10 examination itself and not of a class below that. Yet, in the present case, the contention being that the photostat copy of the marks sheet was of the original certificate of the 5th

standard issued by the Board, the said certificate was required to be called for by the learned Magistrate, by way of an inquiry, and thereafter, dependant upon his/her perception of its authenticity, an appropriate order in terms of Rule 12 of the 2007 Rules was needed to have been passed.

47. Obviously this Court can call for that record itself also now; however, that is not being done for the reason already stated, to the effect that the authenticity of the document first relied upon, is to be examined by the Court of first instance, after which it would draw its conclusion based on its own satisfaction, and pass appropriate orders in terms of the statutory provisions and the judgments of the Supreme Court referred to.

(That is why, in fact, upon an argument to that effect having been raised before this Court by learned counsel for the complainant, as recorded in the order dated 18.05.2017, that the correctness of the certificates produced was not gone into by this Court).

It must be noticed here that, in fact, this Court (this Bench itself) having called for the original register from what is contended to be the first school attended by the petitioner vide its order dated 17.03.2017, was an order which, in retrospect, is seen to be not an order called for by a revisional Court, which at this stage is only to go into the issue whether a proper inquiry was conducted or not.

48. It needs also to be noticed here that as per the dictum in *Parag Bhatish'* case also, the grievousness of the offence alleged to have been committed by the accused is a fact to be looked at; yet, it was also held that if at least *prima facie* evidence regarding an accuseds' minority is produced, an inquiry needs to be conducted, in terms of the law laid down in *Abuzar Hossains'* case.

No doubt in the judgment of the Supreme Court in *Nagendra @ Wireless's* case (supra), it was held that a school leaving certificate is not relevant consideration to determine the juvenility of an accused under Rule 12 (3) (of the Rules of 2007); however in the present case the copy of the certificate relied upon by the petitioner being a certificate issued by a State School Education Board, in the opinion of this Court, the parity sought to be drawn by learned counsel for the complainant is not applicable.

49. Hence, in the opinion of this Court, though the offence alleged to have been committed by the petitioner and his co-accused is obviously very grave and heinous, the allegation being of a double murder having been committed, an inquiry into whether he was just above 16 years of age on the date of commission of offence, as contended, or was not, should have been conducted pursuant to the photocopy of the educational qualification certificate having been produced by the petitioner before the Sub Divisional Judicial Magistrate.

50. This petition is therefore allowed in the aforesaid terms, with a direction to the competent Court (Magisterial Court), to call for the original document, i.e. the 5th standard certificate issued by the Punjab School Education Board, from Punjab School Education Board, and thereafter determine the question of the juvenility of the petitioner.

The orders of the Courts below, as have been impugned in this petition, dated 08.07.2013 and 15.04.2013, are hereby quashed.

51. Before parting with the judgment, it however needs to be stated that this order has been passed in view of the fact that as per Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015, all proceedings pending as regards a child (as defined in that Act), in conflict with law, on the

date that the said Act came into force (January 15, 2016), would proceed as if the Act of 2015 had not been passed, i.e. all such cases are to be dealt with under the Act of 2000 itself.

Therefore, despite the petitioner, even as per his own contention in his application before the Judicial Magistrate, was admittedly above 16 years of age at least, he cannot be dealt with in terms of Sections 15 to 21 of the Act of 2015.

The said provisions are reproduced hereinunder:-

“15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts. <i>Explanation.</i>—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14.	Preliminary assessment into heinous offences by Board.
16. (1) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board once in every three months, and shall direct the Board to increase the frequency of its sittings or may recommend the constitution of additional Boards. (2) The number of cases pending before the Board, duration of such pendency, nature of pendency and reasons thereof shall be reviewed in every six months by a high level committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of this Act in the State and a representative from a voluntary or nongovernmental organisation to be nominated by the Chairperson. (3) The information of such pendency shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in such form as may be prescribed by the State Government.	Review of pendency of inquiry.

17. (1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect. (2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions. 18. (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,— (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian; (b) direct the child to participate in group counselling and similar activities; (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board; (d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated; (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child’s well-being for any period not exceeding three years; (f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child’s well-being for any period not exceeding three years; (g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child’s interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety. (2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to— (i) attend school; or (ii) attend a vocational training centre; or (iii) attend a therapeutic centre; or (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or (v) undergo a de-addiction programme.	Orders regarding a child not found to be in conflict with law Orders regarding child found to be in conflict with law.
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(4) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.	
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(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.

19. (1) After the receipt of preliminary assessment from the Board under section 15, the Children’s Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child,the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children’s Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children’s Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children’s Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children’s Court for record and follow up, as may be required.

20. (1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children’s Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformative changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children’s Court may—

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.

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21. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.	Order that may not be passed against a child in conflict with law.
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52. Thus, as per Section 15 (1) of the new Act, upon the Board assessing the mental and physical capacity of a child above 16 years of age, to commit the offence alleged to have been committed by him/her, and the circumstances in which it was committed, can pass an order in terms of Section 18 (3) of the new Act, by which, instead of the Juvenile Justice Board, the case of the child would be transferred to the Childrens' Court, which thereafter can proceed under Section 19 of the Act.

Thus, a very clear distinction has been drawn between how an alleged offender who is below 16 years of age is to be treated, as against one that is above 16 years of age, also, naturally, dependant upon the nature of the crime alleged to have been committed.

Hence, at the cost of repetition yet again, this Court needs to state that actually allowing even a 16 year old, if he is eventually found guilty of having committed two murders of elderly people, after having entered their house at night and allegedly having robbed them, to escape with a punishment of 3 years incarceration in a special home, (or the period that he has already undergone beyond that period), actually strikes against the conscience of the Court, but with the provisions of the Act of 2015 specifically made not applicable to any pending cases against juveniles, there is no choice with this Court but to obviously to decide the matter in terms of the Act of 2000 only.

53. Naturally, nothing stated hereinabove shall be construed, in any manner, to be any observation with regard to the guilt or innocence of the

petitioner in the actual commission of the crime, which conclusion would be wholly dependent on the evidence led before the competent Court.

(AMOL RATTAN SINGH)
JUDGE

November 28, 2017

dinesh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.