

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Death Reference No.3 of 2016**

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The State Of Bihar

.... .... Petitioner/s

Versus

Onkar Nath Singh @ Sheru Singh, son of Krishna Singh, resident of Village:  
Dullahpur, P.S.: Simri, District- Buxar.

.... .... Respondent/s

with

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**Criminal Appeal (DB) No. 587 of 2016**

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Onkar Nath Singh @ Sheru Singh, son of Krishna Singh, resident of Village:  
Dullahpur, P.S.: Simri, District- Buxar.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance:**

(In D. REF. No.3 of 2016)

For the Petitioner/s : Mr. Vikramdeo Singh, Adv.

For the Respondent/s : Mr. Mayanand Jha, Adv.

(In CR. APP (DB) No.587 of 2016)

For the Petitioner/s : Mr. Vikramdeo Singh, Adv.

For the Respondent/s : Mr. Mayanand Jha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**

**and**

**HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

CAV ORDER

**(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)**

**Date: 19-07-2017**

On account of having been sentenced to capital punishment vide judgment of conviction dated 12.05.2016, order of sentence dated 16.05.2016 passed by Sessions Judge, Buxar in Sessions Trial No.65 of 2015, Death Reference No.3 of 2016 has been drawn up in terms of Section 366 of Cr.P.C as well as having the judgment challenged at the instance of convict/appellant, Cr. Appeal (DB) No.587 of 2016 has also been drawn up.



2. Before coming to main issue, salient feature of the present appeal is to be perceived at a first instance. Harden miscreants advanced their illegal demand from the local businessman including that of deceased who was proprietor of Bhojpur Chuna Bhandar and as he resisted, on account thereof, was murdered broad day in dared devil manner while he was at his business establishment which happens to be in the ground floor of his residential complex by way of indiscriminate firing and for that, Buxar Town P.S. Case No.231 of 2011 was instituted wherein, appellant along with Chandan Mishra, Chotu Mishra, Dinbandhu Singh were identified as an accused against whom, charge sheet was submitted and accordingly, Sessions Trial no.244/2011 taken up. While the aforesaid session trial was going on, appellant who was under custody again acted in similar manner and after shooting the police constable within court premises, he escaped whereupon his trial was separated. Subsequently thereof, after apprehension of the appellant, the separated trial proceeded against him and met with ultimate result, subject matter of above referred death reference as well as criminal appeal.

3. Because of the fact that escape of appellant was at fag end of Original Session Trial No.244 of 2011 on account thereof, Cr. Appeal (DB) No.1000 of 2013, Cr. Appeal (DB) No.1068 of 2013, Cr. Appeal (DB) No.17 of 2014 filed on behalf of other co-



accused/convicts were taken up conjointly and as soon as hearing in the remaining criminal appeal concluded, I.A. No.1804 of 2016 has been filed on behalf of appellant claiming himself to be juvenile showing his date of birth as 19.12.1995 containing (Annexure-1 Series) certificate granted by Uchatar Madhyamik Shiksha Mandal, Delhi, Admit Card relating thereto.

4. Subsequently thereof, the appellant was directed to file supplementary affidavit on the score of status of the institution as well proof in support of genuineness of the institution. Supplementary affidavit has subsequently been filed containing certificate cum mark-sheet as well as migration certificate. Apart from this, birth certificate issued on 21.08.2015, transfer certificate issued by Kanya Prathamik Vidayala, Simri Dughipatti, a certificate granted by Care Inter Sr. Secondary School, Patna and a document having been downloaded disclosing its recognition, being registered under NCT, Delhi, under Trade Mark Certificate, under Copy Right Act, under Planning Commission, under MHRD, Government of India. Again the appellant filed supplementary affidavit disclosing that institution is recognized by Ministry of Labour, Delhi as well as registered by Planning Commission, Government of India, is a Minority Education and is A.N.I.S.O. 2001:2008 Certified Organization. Subsequently thereof, further certification has been made by way of filing of supplementary affidavit containing the



disclosure that for the purpose of employment in Central /State Government Service, the same is automatically recognized. In the aforesaid background, it has been submitted that more than prima facie materials have been placed before the court to perceive status of the appellant to be juvenile and that being so, he be directed to be placed before concerned Juvenile Justice Board as, even having judgment of conviction, he cannot be sentenced. Therefore, prayed for passing of necessary order relating to Death Reference No.3/2016 as well as in the present Appeal No.587/2016.

5. Learned Additional Public Prosecutor while refuting the submission as well as challenging authenticity of the relevant document has submitted that those have got no legal credibility, reliability, acceptability and on account thereof, the submission having been made on behalf of appellant is not at all perceptible in the eye of law.

6. Considering the mental equilibrium of a child who on account thereof, were identifiable under different categories since inception of Children Act, 1986, Juvenile Justice Act, 2000, Juvenile Justice Act, 2016 replacing earlier one, Section 83 of the IPC discloses complete immunization of a child aged up to 7 years however, the child in between 07-12, being an offender has been put under scrutiny of a court which has been entrusted to perceive his mental status whether deficient of sufficient maturity of



understanding. Later on, the acceptance of child has been perceived at an international level under scheme of United Nations of which, India is also one of the members and further in order to respond positively in consonance with the resolution taken under the convention on the rights of the child adopted by general assembly for proper care, perfection, development, adjudication relating to Juvenile, Juvenile Justice Act, 2000 came into force, however considering the nature of offence being committed by a juvenile depicting their activities as full grown harden criminal, in preplanned manner, more particularly relating to heinous crime, Juvenile Justice Act, 2000 has been replaced by the Juvenile Justice Act, 2016 effective since 15.01.2016 having some sort of reservation so far juvenile in conflict of law falling in between 16 to 18 years of age is concerned relating to the heinous offences along with the other provisions with regard to protection of rights of a juvenile in terms of Article 15(3), 39(e),(f), Article 45 and 47 of the Constitution of India.

7. During course of prevailing of Juvenile Justice Act, 2000, an amendment was introduced in the year 2006 whereby and wheredunder certain provisions beneficial to Juvenile in conflict of law was introduced and most important happens to be Section 7A. For better appreciation, the same is quoted below:-

“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.”

**8.** After Nirbhaya episode, much hue and cry has been raised whereupon, Justice Verma Committee was constituted and as per its report, apart from amendment in the penal provisions, status of the juvenile in conflict with law falling in between 16 to 18 years have also been considered whereupon, allowing a radical change, Juvenile Justice Act, 2015 has been introduced after having assent of the president on 31.12.2015. After going through the same it is evident that more or less the status of Section 7A of the Juvenile Justice Act, 2000 has been retained under Section 9 of the Act.

**9.** That being so, the right having provided to a juvenile in conflict with law by way of introduction of Section 7A under old act and further allowing its retention under Section 9(2) of the Act speaks about intention of the legislature to protect the interest of a juvenile in conflict with law whereunder, he/she has been allowed to raised the issue even after finality of the proceeding.

**10.** As stated above, Section 14 of the new Act deals with



the mode of inquiry to be conducted by the Board segregating the identity of a juvenile in conflict with law falling in between 14-16 years as disclosed under sub-clause (4) as well as Section 5(f) and in likewise manner happens to be the identity of Section 15. Section 25 relates with identity of pending enquiry and further, to continue under old Act.

**11.** During course of prevalence of old Act, rules as required therefor were framed by the Centre as well as States including Bihar, wherein, apart from others, methodology for ascertainment of age, the documents to be considered were also laid down. However, the rules under new Act is yet to be framed. Moreover, Section 94 contains the classification of the documents to be considered during conduction of the enquiry in order to ascertain the claim of an accused to be identified as Juvenile in conflict with law. For better appreciation the same is quoted below:

**“94. Presumption and determination of age.-(1)**

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the



absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

**12.** Considering development in the society, free accesses at each corner without any restriction, invasion of electronic gazettes, equipment, expanding, enthusiasm towards material satisfaction, free mode of association, inclination towards addiction, free style of living made the adolescent matured in comparison to their age. Being prone to vulnerability they are subject to being misguided at the end of unscrupulous persons and on account thereof, his activity, is found, sometimes, contrary to their status, showing his activity as being committed by full grown persons becoming hazardous to the society. That happens to be a matter of concern which is yet to be answered by the Apex Court in CBI Vs. Swapan Roy bearing SLP (Crl.) No.5699 of 2014 wherein similar question has been posed before the Apex Court whether to allow the privilege of Juvenile Justice Act to a Juvenile being an accused of preplanned gruesome heinous offence reported in (2015) 4 SCC 323, as well as Gaurav Kumar @ Manu vs. State of Haryana, reported in (2015) 16 SCC 310.



13. Legality of Section 7A was duly acknowledge by the Hon'ble Apex court in *Hari Ram v. State of Rajasthan* reported in (2009) 13 SCC 211. While reaffirming the aforesaid view, the Hon'ble Apex Court had distinguished its applicability putting an obligation upon the delinquent in *Abuzar Hossain v. State of W.B.* reported in (2012) 10 SCC 489 in following way:

“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* (2009) 7 SCC 415 and *Pawan* (2009) 15 SCC 259 these documents were not found prima facie credible while in *Jitendra Singh* (2010) 137 SCC 523 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.”

**14.** Applicability of the Act in consonance with the entitlement of a delinquent for his proper identification has been explained in *Union of India v. Ajeet Singh* reported in (2013) 4 SCC 186 wherein it has been held:

“**19.** The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of “juvenile” to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence. (See *Jayendra v. State of U.P.* (1981) 4 SCC 149, *Gopinath Ghosh v. State of W.B.* AIR 1984 SC 237, *Bhoop Ram v. State of U.P.* (1989) 3 SCC 1, *Umesh Singh v. State of Bihar*(2000) 6 SCC 89, *Akbar Sheikh v. State of W.B.* (2009) 7 SCC 415, *Hari Ram v. State of Rajasthan* (2009)



*13 SCC 211, Babla v. State of Uttarakhand (2012) 8 SCC 800 and Abuzar Hossain v. State of W.B. (2012) 10 SCC 489)*”

**15.** The mode of order which the court was /is expected to pass against a juvenile falling in between 16 to 18 years has been laid down in *Jitendra Singh v. State of U.P.* reported in (2013) 11 SCC 193:

“**80.** The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the court concerned will continue and be taken to their logical end except that the court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.”

**16.** The mode of activity being adopted by a juvenile during course of commission of a crime in a background, as discussed hereinabove happens to be matter of concerned and the Hon’ble Apex Court in *Parag Bhati (Juvenile) through legal guardian-mother-Rajni Bhati vs. State of Uttar Pradesh & Anr.* reported in (2016) 12 SCC 744 has held after taking into consideration the principle decided at an earlier occasion in *Om Prakash vs. State of Rajasthan & Anr.* reported in (2012) 5 SCC 201, *Abuzar Hossain v. State of W.B.* reported in (2012) 10 SCC 489, *Ashwani Kumar Saxena vs. State of Madhya Pradesh* reported in (2012) 9 SCC 750 and culled down the same in following way:

“33. In *Abuzar Hossain* (supra), wherein a three-Judge



Bench of this Court has already summarized the position regarding 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 credibility and/or acceptability of the documents 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 and 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 Appellant.

34. 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.

35. 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.

36. 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.”



17. In *Mukarrub etc. vs. State of U.P.* reported in 2017 *Cr.L.J. 1013* wherein the plea of juvenility was taken before the Apex Court for the first time by the appellant who happens to be convict along with others for an offence punishable under Section 302/149 IPC, 148 IPC, has also considered the principle decided in *Abuzar Hossain v. State of W.B.* reported in (2012) 10 SCC 489, *Parag Bhati (Juvenile) through legal guardian-mother-Rajni Bhati vs. State of Uttar Pradesh & Anr.* reported in (2016) 12 SCC 744 and concurred the same.

18. Adverting to facts of the case, it is apparent that appellant, in order to buttress his claim to be a juvenile, filed certificate of Class-X issued by Ucchatar Madhyamik Shiksha Mandal, Delhi. Furthermore, by another supplementary affidavit a communiqué issued by the said institution has also been placed to suggest that the same happens to be duly recognized as equivalent to matric for the purpose of appointment in government service. But, failed to produce any other notification of the Government of Bihar to the effect that the aforesaid Class-X degree has been recognized as equivalent degree of matriculation issued by the Bihar School Examination Board or Central Board of Secondary Education. Another document, the birth certificate has also been placed which has been issued in the year 2015, after the occurrence and so happens to be doubtful over its authentication as has been held by



the Hon’ble Apex Court in *Akbar Sheikh v. State of W.B.* reported in *(2009) 7 SCC 415* as well as *Pawan v. State of Uttaranchal*, reported in *(2009) 15 SCC 259*.

19. Accordingly, the documents so referred above do not inspire confidence to infer, prima facie regarding status of the appellant to be juvenile on the alleged date of occurrence.

20. That being so, prayer is found non-entertainable, consequent thereupon, I.A. No. 1804 of 2016 is rejected. Office to list for hearing.

(Aditya Kumar Trivedi, J.)

(Samarendra Pratap Singh, J.)

Prakash Narayan

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| AFR/NAFR          | AFR        |
| CAV DATE          | 10.05.2017 |
| Uploading Date    | 19.07.2017 |
| Transmission Date | 19.07.2017 |

