

3. The brief facts relevant to the facts in issue have been summarized as follows.

4. The applicant was arraigned as an accused of the offences under Section 376(2)(f)(i) and 342 of the Indian Penal Code read with Sections 3, 6 and 5(i)(m) of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' for short). The charges were framed. The witnesses were also examined. The accused did not cross-examine the witnesses, as the counsel representing the accused did not attend the case. Subsequently, the lawyer changed. He sought permission to cross-examine the witnesses. The leave was granted; however, instead of cross-examining the witnesses, the applicant/accused raised a plea of juvenility. He claimed that on the date of the alleged incident, he was below 18 years. Therefore, the inquiry may be conducted in that regard, and he may be dealt with accordingly.

5. The investigating officer has collected the proof of the date of birth of the applicant from the school where the applicant was admitted to level first. The certificate issued by the school was attached to the charge sheet. As per the said entry of the school admission, his date of birth was 01.06.1994. The incident occurred on 28.05.2014. The learned Adhoc District Judge and Additional Sessions Judge, Aurangabad, considered these facts and held that at the time of the alleged incident, the applicant was 19 years, 11 months and 27 days old.

6. The learned Additional Sessions Judge granted the leave to examine the witnesses. The applicant examined the headmistress of the school where he was admitted to level first. She produced the extract of the Pravesh Patrak and Nirgam Utara (the extract of the information about the student recorded at the time of his/her admission). He also produced the birth certificate issued by the Village Sarpanch dated 04.07.2001, Ladsawangi wherein his date of birth was recorded as 01.06.1994. He also supplied the certificate of the Village Development Officer, and the office of the Village Sarpanch Ladsawangi dated 06.08.2019, wherein he certified that in the birth register, there was no entry of the birth of the applicant. He would also rely on the ossification test dated 04.07.2014. On the report of ossification test the opinion was expressed that the approximate age of the applicant was between 17 to 18 years. Therefore, if the benefit of a margin of two years is given, he was below 18 years at the time of the alleged incident.

7. Learned counsel for the applicant further argued that the entry in the school admission register has no probative value. Either the parents are examined, or the person on whose information the entry was made has to be examined. To bolster his arguments, he relied on the case of Muskan w/o Shaikh Rashid @ Rafiq Vs. The State of Maharashtra, 2017 ALL MR (Cri) 2722. He further relied on the case of Madan Mohan Singh and Ors Vs. Rajni Kant and Ors, Civil

Appeal No.6466 of 2004, decided on 13.08.2010 (Supreme Court). In the said judgment in para 17, it has been observed that “For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded.

8. He also relied on the case of Alamelu and Ors Vs. State represented by Inspector of Police, Criminal Appeal No.1053 of 2009 decided on 18.01.2011 (Supreme Court). In the said case, the observations recorded in the case of Birad Mal Singhvi Vs. Anand Purohit MANU/SC/0052/1988: 1988 (Supp) SCC 604 were reiterated. It has been observed in the said case that merely proving the documents does not mean that the contents of the documents were also proved.

9. He also relied on the case of Vinod Katara Vs. State of Uttar Pradesh, 2022 LiveLaw (SC) 757. On evaluating the facts of the case, the Hon’ble Supreme Court held that when two probabilities arise, the benefit of doubt goes in favour of the accused. He also relied on the case of Shah Nawaz Vs. State of U.P. and Anr., Criminal Appeal No.1531 of 2011 (Arising out of S.L.P. (Cri.) No.3361 of

2011) and argued that the mark sheet is one of the proofs for determining the age of the accused. It was reiterated in the said case that the entry relating to the date of birth entered in the mark sheet is one of the valid proof of evidence for the determination of the age of an accused. The School Leaving Certificate is also valid proof in determining the age of the accused person.

10. He also relied on the case of Ravinder Singh Gorkhi Vs. State of U.P., (2006) 5 SCC 584. In the said case, the requirement of Section 35 of the Indian Evidence Act was discussed. It was observed that Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder : (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be made either by a public servant in the discharge of his official duty or by any person in the performance of a duty specially enjoined by the law of the country, and (iv) all persons concerned indisputably must have access thereto. It has also been held that in the absence of any other statute operating in the field, Section 35 of the Indian Evidence Act will apply. It has been finally expressed that until the age of a person is required to be determined in a manner laid down under a statute, a different standard of proof should not be adopted. He also relied on the case of Arnit Das Vs. State of Bihar, (2000) 5 SCC 488. The facts of that case are altogether different. In the case of Hari Ram Vs. State

of Rajasthan and Another, (2009) 13 SCC 211, it has been held that once after the accused had crossed the age of 18 years on or before the commencement of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('The J.J. Act' for short) or was undergoing sentence after conviction, the claim of the juvenility is tenable. It has also been held in the said case that the age of the person claiming juvenility has to be determined in the manner prescribed in Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 ('The J.J. Rules' for short). In Rule 12 of the said Rules, the procedure to determine the age was laid down. It was observed that the Court or the Board or as the case may be, the Committee or board shall decide the juvenility of the person in conflict with law, for determining the age, the Court or the Board or as the case may be, the Committee was to seek evidence by obtaining the matriculation or equivalent certificates, if available; and in the absence whereof; the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; the birth certificate given by a corporation or a municipal authority or a panchayat; and only in the absence of either, the medical opinion was to be sought from a duly constituted Medical Board.

11. On the basis of the above arguments, learned counsel for the applicant claimed that the evidence produced by the prosecution as regards the age of the applicant was inadmissible. The entry in the

school cannot be taken on the basis of the certificate issued by the Sarpanch, who has no authority. Registration of Births and Deaths Act, 1969 confers the power on the public servant. Therefore, the entry in the school admission register is invalid and inadmissible. He argued that for these reasons, the impugned order is liable to be quashed and set aside.

12. Per contra, learned APP for the State would submit that the applicant failed to produce the evidence that may impeach the entry in the school register. The applicant himself has brought the fact on record that there was no entry in the birth register maintained by the Village Panchayat. The entry taken in the school admission register was taken by a public servant in discharge of his official duty on the instructions and information supplied to him by the parents. Therefore, in the absence of any evidence that may impeach the entry into the school, the entry recorded in the admission register long back by a public servant has probative value. Therefore, the impugned order is legal, correct and proper.

13. As per the school entry, the date of birth of the applicant/accused was 01.06.1994. To rebut the probative value of the said entry, the accused examined the headmistress of the primary school where the applicant was admitted to the first level. She had produced the admission extract register and admission form bearing a thumb impression of the mother of the applicant. But there was no

column in the admission register, about the person who gave the information about the date of birth of the pupil. She proved the said documents. The accused re-examined the said witness, and it was brought in her cross-examination that she was not serving as headmistress on the date of the admission of the accused to the school. She did not know who the headmaster was at the time of the applicant's admission.

14. The application claiming the juvenility was filed on 13.07.2017. Earlier, the J.J. Rules, 2007, were available to determine the age of the accused. On the date of the application, the J.J. Act 2015 was in force; hence, the procedure prescribed under Section 94 of the said act for determining the age would apply. Sub-section 2 of Section 94 of the J.J. Act, which is relevant, reads thus:

“(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:”

15. The ratio laid down in the case of Birad Mal Singhvi (cited supra) is squarely applicable to the case at hand. In rebuttal, the headmistress of the primary school the successor in office had produced the record maintained by the school through the public servant in the discharge of her/his official duty. Therefore, her evidence is cogent and reliable. She has also produced the admission form, which bears the thumb impression of the mother of the applicant. It is correct that the Village Sarpanch has no power to issue the birth certificate. For Village Panchayats, the State employees are the Registrars of death and birth registration. They must maintain the registers prescribed under the Registration of Death and Birth Act 1969. However, the fact remains that the applicant was admitted to the school, and his date of birth was recorded on the instructions of her mother. This is the material on the basis of which the age was recorded, and it was the entry stating the fact in issue and made by a public servant in the discharge of his official duty. In the case of Muskan Shaikh (cited supra), it has been held that the secondary school certificate has no probative value. Either the parents are examined, or the person on whose information the entry must have been made is examined. The facts of this case are altogether different. The applicant or his parents never complained about the entry in the school admission record about his date of birth. For

changing his date of birth, the procedure has been laid down in Secondary School Code. That apart, the applicant has no unimpeachable evidence of a reliable person or contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc., to discard the entry in the school register. In the absence of such evidence, the entry in the school admission register cannot be discarded.

16. Sub-section 2 of Section 94 is very specific that the first evidence of the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board should be preferred, the birth certificate given by a corporation or a municipal authority or a panchayat. In view thereof, the birth certificate from primary school has a probative value.

17. Learned counsel for the applicant argued that the entry in the school record is inadmissible. Therefore, the ossification test report would prevail. However, in Sub-section 2 sub-clause (iii), it has been specifically provided that in the absence of the documents required in clause (i) and (ii), the ossification test be conducted on the orders of the Committee or Board to determine the age. In simple words, it is clear that the ossification test to determine the age is the last remedy available in the absence of documents mentioned in clauses (i) and (ii) of said sub-section. The school record is

admissible. In view thereof, the ossification test report cannot be considered.

18. The applicant failed to establish the juvenility on the date of the alleged incident. He does not deserve the benefit of juvenility. The impugned order is well reasoned and free from infirmity. The Court did not find any substantial grounds to interfere with the impugned order. Hence, the revision application stands dismissed.

19. Rule is discharged.

(S.G. MEHARE, J.)