

IN THE HIGH Court OF JUDICATURE AT PATNA
CRIMINAL REVISION No.603 of 2022

Arising Out of PS. Case No.-167 Year-2019 Thana- PARIHAR District- Sitamarhi

Md. Nadim @ Sheikh Md. Nadim, S/o Md. Sabir R/o village- Sutihara, Tola,
P.S.- Parihar, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Arsad Barkati @ Guddu Babu, S/o Abdul Rahim R/o village- Sutihara,
P.S.- Parihar, District- Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Mukesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 04-04-2024

1. The instant criminal revision is directed against the order, dated 19th of July 2022, passed by the learned Additional Sessions Judge, 1st Court-cum-Special Judge, Children's Court, at Sitamarhi, in connection with Criminal Appeal No. 13 of 2022, filed by the Opposite Party No. 2 herein, whereby and whereunder, the learned Appellate Court quashed and set aside the order, dated 18th of February 2022, passed by the learned Juvenile Justice Board (hereinafter referred to as the 'JJB') Sitamarhi in G.R. Case No. 3102 of 2019, arising out of Parihar P.S. Case No. 167 of 2019. The JJB declared the Petitioner to be a Child in Conflict with Law.

2. On the basis of a written complaint submitted by



the Opposite Party No. 2, police registered Parihar P.S. Case No. 167 of 2019 against altogether 18 persons, including the Petitioner, alleging, inter alia, that the accused persons surrounded his brothers, namely, Md. Akram and Md. Arman and assaulted both of them with the help of *lathi, gadasha*, knife, sword, iron rod, etc., as a result of which, one of the brothers of the *de facto* complainant, namely, Md. Akram died.

3. In the FIR, the Opposite Party No. 2 purposefully recorded the age of the Petitioner as 25 years, although, at the time of alleged occurrence, the Petitioner was only 16 years of age. As the Petitioner took up the ground of his juvenility, he was produced before the Juvenile Justice Board, and upon inquiry, the JJB held that, on the date of occurrence, the Child in Conflict with Law (hereinafter referred to as the 'CICL') was aged about 15 years, 9 months, and 13 days. As the CICL was below 16 years of age, the learned Principal Magistrate, JJB, allowed Petitioner's application for bail, vide order, dated 2nd of March 2022.

4. Against the aforesaid order, the informant preferred an appeal before the Children's Court under the provision of Section 101 of the Juvenile Justice Act (Care and Protection of Children) Act, 2015 (hereinafter referred to as the



‘said Act’). The said appeal, being Criminal Appeal No. 13 of 2022, was allowed by the Appellate Court, and the learned Judge, in appeal, held the Respondent/Petitioner herein not to be a CICL on the date of commission of offence.

5. On perusal of the impugned judgment, it is ascertained that the Appellate Court determined the age of the victim in the touchstone of Section 94 of the said Act. Sub-Section 2 of Section 94 states:-

“94(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: or 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.

6. Indisputably, the Petitioner failed to produce any matriculation or equivalent certificate as per Section 94 (2)(i). The Petitioner relied upon birth certificate and school living certificates. The JJB, on the other hand, relied upon the report rendered by the Board of Doctors on the basis of an ossification test report dated 22nd of November 2021, wherein the age of the Petitioner was found to be 18 to 19 years on the date of medical examination i.e. 26th of October 2021. The JJB gave the benefit of variation and determined the age of the Petitioner as 15 years, 9 months, and 13 days on the date of occurrence. Therefore, the Petitioner was found to be a CICL.

7. The Informant/Opposite Party No. 2 herein relied upon the voter list and voter ID Card of the Petitioner and claimed that the Petitioner was not a CICL on the date of commission of offence.

8. The learned Advocate for the Petitioner first refers to a judgment of the Hon'able Supreme Court in the case of ***Vinod Katara Vrs. State of Uttar Pradesh*** reported in **2023 (2) BLJ SC 37**. It is held by the Hon'ble Supreme Court that in deciding, whether accused is juvenile or not, hyper-technical approach should not be adopted. While appreciating the



evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, Court should lean in favour of holding accused to be juvenile in border-line cases. Inquiry contemplated is not a roving inquiry. Court can accept as evidence something more than an affidavit, i.e. documents, certificates, etc. as evidence in proof of age. Mere opinion by a person as to accused looking one or two years older than age claimed by him or fact that accused told his age to be more than what he alleges in the case while being arrested by the police officer, would not hold much water. It is documentary evidence placed on record that plays a major role in determining age of a juvenile in conflict with law. It is only in cases where documents or certificates placed on record by accused in support of his claim of juvenility are found to be fabricated or manipulated, that Court, Juvenile Justice Board or Committee need to go for medical test for age determination. In those cases where plea of juvenility is raised at a belated stage, often certain minor tests are resorted to for age determination in absence of documents enumerated in Section 94 of the said Act.

9. It is contended by the learned advocate for the Petitioner that the Petitioner produced school-leaving certificate



from Sharda Dhanushdhari Sanskrit Primary & Madhyamik Vidyalaya Bajitpur, Bajpatti wherein date of birth of the Petitioner was recorded as on 14th of March 2003. The date of occurrence was on 8th of August 2019. Therefore, according to the school-leaving certificate, the Petitioner was aged about 16 years, 4 months, 25 days.

10. It was contended on behalf of the Respondents that the said school was closed prior to 2004 and the building of the school was collapsed in 2004. Thus, the birth certificate of the Petitioner was forged and fabricated.

11. During inquiry, the Board summoned one Diwakar Pathak on 3rd of April 2021, who happens to be the headmaster of the said school. He stated before the Board that the claimant was not a student of his school and the school has already been demolished in the year 2004. Therefore, there was no occasion to issue date of birth certificate as per the school register in the year 2014. Subsequently, the Petitioner brought another school certificate allegedly issued by B.R. National Convent School, Kachor, Sitamarhi, wherein his date of birth was recorded as on 14th of March 2003. According to the Petitioner, he was admitted to the said school on 9th of April, 2011 and left the school on 31st of March 2017. The headmaster



of the said school, namely, Shailendra Kumar Jha, however, stated that the Petitioner was never a student of B.R. National Convent School, Kachor, Sitamarhi. On behalf of the Petitioner, a certificate issued by the village *Panchayat*- Sutihara, was produced where his date of birth was mentioned as 14th of January, 2003. The said birth certificate issued by the *Panchayat* was subsequently cancelled, stating, *inter alia*, that it was prepared on the basis of false documents.

12. Under such circumstances, the JJB directed to conduct ossification test by constituting a Medical Board for determination of the age of the Petitioner. The Medical Board submitted its report on 22nd of November, 2021 and it was opined by the Medical Board that on the date of medical examination, the CICL was aged between 18 and 19 years.

13. The learned Advocate for the Petitioner also refers to another decision of the Hon'ble Supreme Court in the case of ***Rishipal Singh Solanki Vrs the State of Uttar Pradesh & Anr.***, reported in **(2022) 8 SCC 602**. In the aforesaid report, the Hon'ble Supreme Court was pleased to deal with all the relevant decisions on the provisions under consideration, and this Court is tempted to record paragraph 32 of the said decision:-



“32. The relevant decisions on the provisions under consideration could be referred to at this stage:

32.1. In Ashwani Kumar Saxena v. State of M.P. [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594] , this Court opined that under Section 7-A of the JJ Act, 2000 obligated the Court to make an inquiry and not an investigation or trial under the Code of Criminal Procedure. The Court stated its opinion in the following words : (SCC p. 764, para 34)

“34. ... There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”

32.2. Reference could also be made to another decision of this Court in Abuzar Hossain v. State of W.B. [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , wherein it has been summarised as under : (SCC pp. 509-10, para 39)

“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 [Akbar Sheikh v. State of W.B., (2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [Pawan v. State of Uttaranchal, (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] , these documents were not found prima facie credible while in Jitendra



Singh [Jitendra Singh v. State of U.P., (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] 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 shall 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.”

32.3. In Arnit Das (1) v. State of Bihar [Arnit Das (1) v. State of Bihar, (2000) 5 SCC 488 : 2000 SCC (Cri) 962] , this Court observed that while considering the question as to determination of the age of an accused for the purpose of ascertaining whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced in support of the plea that he was a juvenile and, if two views may be possible, the Court should lean in favour of holding the accused to be a juvenile in borderline cases. This is because the Act being a welfare legislation, the courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishment for having committed serious offences.

32.4. In Jitendra Ram v. State of Jharkhand [Jitendra Ram v. State of Jharkhand, (2006) 9 SCC 428 : (2006) 2 SCC (Cri) 623] , this Court has sounded a note of caution on the earlier observations made by it in Bhola Bhagat v. State of Bihar [Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720 : 1998 SCC (Cri) 125] , wherein it was observed that an obligation has been cast on the Court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. This Court referring to its decision in Bhola Bhagat [Bhola



Bhagat v. State of Bihar, (1997) 8 SCC 720 : 1998 SCC (Cri) 125] observed as follows : (Jitendra Ram case [*Jitendra Ram v. State of Jharkhand*, (2006) 9 SCC 428 : (2006) 2 SCC (Cri) 623] , SCC p. 433, para 20)

“20. ... We are, however, of the opinion that the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records.”

32.5. The aforesaid observations were made in the context of what had been stated in *Bhola Bhagat v. State of Bihar* [*Bhola Bhagat v. State of Bihar*, (1997) 8 SCC 720 : 1998 SCC (Cri) 125] which is extracted as under : (*Bhola Bhagat case* [*Bhola Bhagat v. State of Bihar*, (1997) 8 SCC 720 : 1998 SCC (Cri) 125] , SCC p. 729, para 18)

“18. Before parting with this judgment, we would like to re-emphasise that when a plea is raised on behalf of an accused that he was a “child” within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding



regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other.”

32.6. *Further, in Jabar Singh v. Dinesh [Jabar Singh v. Dinesh, (2010) 3 SCC 757 : (2010) 2 SCC (Cri) 484] , this Court considered a situation wherein the entry of date of birth in the admission form of the school records or transfer certificates did not satisfy the condition laid down under Section 35 of the Evidence Act i.e. the said entry was not in any public or official register and was not made either by a public servant, in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and therefore the said evidence was not relevant for the purpose of determining the age of the accused in the said case. In the aforesaid case, this Court set aside the order [Dinesh v. State of Rajasthan, 2006 SCC OnLine Raj 1460] of the High Court in revision and confirmed the order of the trial court holding that the accused therein was a juvenile at the time of the commission of the alleged offence.*

32.7. *In Babloo Pasi v. State of Jharkhand [Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266] , this Court while dealing with the provisions of the JJ Act, 2000, observed as under : (SCC p. 142, paras 22-23)*

“22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person,



though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.

23. It is true that in Arnit Das (1) v. State of Bihar [Arnit Das (1) v. State of Bihar, (2000) 5 SCC 488 : 2000 SCC (Cri) 962] this Court has, on a review of judicial opinion, observed that while dealing with a question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. We are also not oblivious of the fact that being a welfare legislation, the courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences.”

32.8. In State of M.P. v. Anoop Singh [State of M.P. v. Anoop Singh, (2015) 7 SCC 773 : (2015) 4 SCC (Cri) 208] , it was observed that the ossification test is not the sole criterion for determination of date of birth, when birth certificate and middle school certificate are available. It was observed that the High Court was not right in presuming that the prosecutrix, therein, was more than 18 years of age at the time of the incident. There was a difference of two days in the date of birth mentioned in the birth certificate and the middle school certificate



but the same was held to be a minor discrepancy. In that case, it was held that the prosecutrix was below 16 years of age at the date of the incident and set aside the judgment passed by the High Court.

32.9. Sanjeev Kumar Gupta v. State of U.P. [Sanjeev Kumar Gupta v. State of U.P., (2019) 12 SCC 370 : (2019) 4 SCC (Cri) 379] , is a judgment authored by one of us (Hon'ble Dr D.Y. Chandrachud, J.), wherein the credibility and authenticity of the matriculation certificate for the purpose of determination of the age under Section 7-A of the JJ Act, 2000, came up for consideration. In the said case, the JJ Board had rejected the claim of juvenility and this Court confirmed the decision of the JJ Board rejecting the claim of juvenility by setting aside the judgment [Puneet v. State of U.P., 2018 SCC OnLine All 5150] of the High Court. In the said case, it was observed that the records maintained by CBSE were purely on the basis of the final list of the students forwarded by the Senior Secondary School where the second respondent therein had studied from Classes 5 to 10, and not on the basis of any other underlying document. On the other hand, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of another school which the second respondent therein had attended till Class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both, Aadhaar card and driving licence. It was observed that the date of birth reflected in the matriculation certificate could not be accepted as authentic or credible. In the said case, it was held that the date of birth of the second respondent therein was 17-12-1995 and that he was not entitled to claim juvenility as the



date of the alleged incident was 18-8-2015.

32.10. *In Sanjeev Kumar Gupta case [Sanjeev Kumar Gupta v. State of U.P., (2019) 12 SCC 370 : (2019) 4 SCC (Cri) 379] , the judgment of this Court in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594] and Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] were considered and it was noted that the decision in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] was rendered three days after the decision in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594] , and in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , which was a three-Judge Bench decision, it was observed that the credibility and acceptability of the documents, including the school-leaving certificate, would depend on the facts and circumstances of each case and no hard-and-fast rule as such could be laid down in that regard.*

32.11. *It was observed in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] by Hon'ble T.S. Thakur, J., as then the learned Chief Justice was, that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former, the Court simply records a prima facie conclusion, while a declaration is made on the basis of evidence. Hence, the approach at the stage of directing an inquiry has to be more liberal lest, there is miscarriage of justice. The standard of proof required is different for both. In the former, the Court simply records the prima facie conclusion. It would eventually depend on*



how the Court evaluates such material for a prima facie conclusion and the Court may or may not direct an inquiry. In the latter, the Court makes a declaration on evidence that it scrutinises and accepts such evidence only if it is worthy of acceptance. His Lordship further observed as under : (Abuzar Hossain case [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , SCC p. 514, para 48)

“48. ... The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case-to-case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry.”

32.12. In Parag Bhati v. State of U.P. [Parag Bhati v. State of U.P., (2016) 12 SCC 744 : (2017) 3 SCC (Cri) 819] , both the aforesaid judgments were considered and this Court observed as under : (SCC pp. 757-58, paras 34-35)

“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.”

From the above decision, it is clear that the purpose of the Juvenile Justice Act, 2000 is not to give shelter to the accused of grave and heinous offences.

32.13. *In para 36 of Parag Bhati [Parag Bhati v. State of U.P., (2016) 12 SCC 744 : (2017) 3 SCC (Cri) 819] it is observed : (SCC p. 758)*

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 of date of birth, 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 [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

32.14. *In the judgment rendered by Hon'ble Hemant Gupta, J., in Ram Vijay Singh v. State of U.P. [Ram Vijay Singh v. State of U.P., (2021) 15 SCC 241 : 2021 SCC OnLine SC 142 : 2021 Cri LJ 2805] , it was observed that the ossification test is not the sole criterion of age determination and a blind and mechanical view regarding the age of the person cannot be adopted solely on the basis of medical opinion by radiological examination. Though, radiological examination is a useful guiding factor for determining the age of a person, the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error. Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other circumstances. The relevant paragraphs of the said judgment are extracted as under : (SCC paras 15-17)*

“15. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person. There are minor variations as the Rules 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The



importance of ossification test has not undergone change with the enactment of Section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules.

16. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age.

17. This Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] held, in the context of certificate required under Section 65-B of the Evidence Act, 1872,



that as per the Latin maxim, lex non cogit ad impossibilia, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.”

14. Finally, it was held by the Hon’ble Supreme Court that a claim of juvenility may be raised at any stage of a criminal proceeding, even after final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before the Hon’ble Court. When the issue of juvenility arises before a Court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015, but when a person is brought before a Committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

15. When a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned



in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

16. The said presumption is, however, not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence led by the opposite party. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal Court concerned. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence also, the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinized and accepted only if worthy of such acceptance. It is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It



has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case. A hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of Section 35 Evidence Act.

17. The learned Advocate for the Petitioner refers another decision in the case of *Karan Vrs. State of M.P.*, reported in *(2023) 5 SCC 504*. In this report, it is held that ossification test, even if allowed, it will only give a broad assessment of the age, but not an exact age, because there always remains an element of margin of plus or minus 1 to 2 years and, therefore, it will have no bearing on the assessment made by the Trial Court after the inquiry. Further, legally, first preference is to be given to birth certificate issued by the school or a matriculation certificate. Even, in addition to the mark-sheets and the school leaving certificate, the date of birth certificate also may be looked into. In the absence of the first category of documents being not available, the birth certificate



from the Municipal Corporation may be considered and in the absence of both the documents, ossification test is the only method on the basis of which age of a juvenile may be determined.

18. In the instant case, the accused filed as many as two school leaving certificates stating his date of birth. However, when the headmasters of the schools were confronted with the said certificates, one of them stated that the first school is not in existence since 2004 and in the second case, the headmaster stated that the Petitioner was never admitted to the said school. Therefore, the JJB could not accept the school certificates and directed the Petitioner for ossification test. Ossification test was done and it was held that on the date of ossification test, he was aged in between 18 and 19 years.

19. It is needless to say that determination of age by ossification varies one or two years on either side. It is held in Vinod Katara (supra) that when two views with regard to the age of the CICL are possible, the view that helps the Petitioner shall be accepted. In that case, the Petitioner will be held to be a juvenile on the date of commission of offence.

20. For the reasons stated above, I am not in a position to be in conformity with the decision made by the



learned Appellate Court.

21. The instant revision is accordingly allowed.

22. The order, dated 19th of July 2022, passed by the learned Additional Sessions Judge, 1st Court-cum-Special Judge, Children's Court, at Sitamarhi, in connection with Criminal Appeal No. 13 of 2022 is quashed and set aside.

23. The victim be treated as CICL juvenile but as on the date of commission of offence, he was above 16 years of age, he shall be tried before the Children’s Court.

(Bibek Chaudhuri, J)

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