

PARAG BHATI (JUVENILE) THR. LEGAL GUARDIAN-
MOTHER-SMT. RAJNI BHATI

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v.

STATE OF UTTAR PRADESH AND ANR.

(Criminal Appeal No. 486 of 2016)

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MAY 12, 2016

[A. K. SIKRI AND R. K. AGRAWAL, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000:

s. 7A – Juvenility of the accused on the date of occurrence – Determination of – Date of birth mentioned in the matriculation certificate doubtful, direction by the Medical Board for conducting ossification test of accused and the Board holding that appellant is a major – Correctness of – Held: If the Board comes to the conclusion that the date of birth mentioned in the matriculation certificate raises some doubt on the basis of material or evidence on record, it can seek medical opinion from a duly constituted medical board to determine the age of the accused person claiming juvenility – On facts, discrepancy in the date of birth mentioned in school certificate – Transfer certificate issued by the Junior High School found to be forged – As such the medical of the appellant was conducted by the Medical Board wherein his age was assessed about 19 years and he was ordered to be tried by the Session Court – Board rightly did not give the benefit of one year to the appellant under the Rules – Since there was doubt on the correctness of the date of birth, an enquiry for determination of the age of the accused was done – Thus, no illegality in the orders passed by the Board and the Courts below – Juvenile Justice (Care and Protection) Rules, 2007 – r. 12.

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Principal of benevolent legislation. – Benefit of – When – Held: Benefit would 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 – Benefit of the possibilities of two views cannot be given to the accused involved in grave and serious offence committed in a planned manner – Courts cannot adopt a casual or cavalier approach while recording whether an accused is a juvenile or not – Courts are enjoined upon to perform their duties with the

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A *object of protecting the confidence of common man in the institution entrusted with the administration of justice.*

Dismissing the appeal, the Court

B **HELD: 1.1 It is clear that under Section 7A of the Juvenile Justice Act, the court is enjoined to make an inquiry and take such evidence as may be necessary to determine the age of the person who claims to be a juvenile. However, under Rule 12 of the Juvenile Justice (Care and Protection) Rules, 2007, the Board is enjoined to take evidence by obtaining the matriculation certificate if available, and in its absence, the date of birth certificate from the school first attended and if it is also not available then the birth certificate given by the local body. In case any of the above certificates are not available then medical opinion can be resorted to. However, if the Board comes to the conclusion that the date of birth mentioned in the matriculation certificate raises some doubt on the basis of material or evidence on record,,it can seek medical opinion from a duly constituted medical board to determine the age of the accused person claiming juvenility. [Para 16] [1101-C-E]**

E **1.2 From the documents on record, it is seen that the date of birth of the appellant-accused is 13.09.1995 in the records of the High School and 17.09.1994 is mentioned in the records of Kisan Vaidik Junior High School. If the date of birth mentioned in such certificate is proved wrong then it cannot be relied upon. As the date of birth which is alleged to have been recorded in Saint Joseph School is on the basis of the transfer certificate issued by the Kisan Vaidik Junior High School and such transfer certificate has been found to be forged, therefore, the Board came to the conclusion that the date of birth mentioned in the certificate issued by the Secondary School Examination mentioning it as 13.09.1995 on the basis of Vishwa Bharti Public School, Greater Noida cannot be believed. Further, the date of birth which was recorded in Vishwa Bharti Public School was on the basis of the date of birth recorded in Saint Joseph School and the date of birth recorded in the Saint Joseph School had been found to be without having any basis. On 30.08.2011, the Board, on merits, conducted proceedings to register case against father of the appellant for producing forged evidence and giving false statement**

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before the Court which fact has already been proved that the documents produced on behalf of the appellant-accused were forged. [Paras 18, 21] [1102-H; 1103-A; 1104-G-H; 1105-A]

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1.3 Due to this discrepancy, the Medical of the appellant-accused got conducted by the Medical Board wherein on 23.08.2011, his age was assessed about 19 years and the Board fixed the age of the appellant-accused as 18 years, 10 months and 6 days and he was ordered to be tried by the Session Court. The Board did not give the benefit of one year as provided in Rule 12 of the Rules in favour of the appellant-accused on the ground that the complainant-Respondent No. 2 had filed the photocopy of Panchayat Electoral Roll 2009 Development Block Dankaur, according to which, the age on 01.01.2009 was mentioned as 19 years and the date of the incident is 29.06.2011. Therefore, the Board rightly did not give the benefit of one year to the appellant-accused under the Rules. [Para 22][1105-B-D]

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1.4 The plea that the appellant-accused studied in Aster Public School up to Class 6th and thereafter, Mussoorie Modern School was never raised before the Board for reasons best known and the appellant cannot take advantage of a new case being set up before this Court for determination of age under the JJ Act. [Para 23] [1105-E]

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1.5 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. [Para 26] [1107-C-D]

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1.6 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

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A 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. [Para 27] [1107-E-F]

B 1.7 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.

C 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, an enquiry for determination of the age of the accused is permissible which was done in the instant case. There is no illegality in the orders passed by the Board and the Courts below which requires interference. [Paras 28, 29] [1107-G-H; 1108-A]

Abuzar Hossain alias Gulam Hossain vs. State of West Bengal 2012 (9) SCR 244 : (2012) 10 SCC 489 – relied on.

E *Rajinder Chandra vs. State of Chhattisgarh and Another* (2002) 2 SCC 287; *Hari Ram vs. State of Rajasthan & Another* 2009 (7) SCR 623:(2009) 13 SCC 211; *Ashwani Kumar Saxena vs. State of Madhya Pradesh* 2012 (10) SCR 540:(2012) 9 SCC 750; *Mahadeo s/o Kerba Maske vs. State of Maharashtra and Anr* (2013) 14 SCC 637; *State of Madhya Pradesh vs. Anoop Singh* 2015 (6) SCR 960:(2015) 7 SCC 773; *Om Prakash vs. State of Rajasthan and Anr.* 2012 (5) SCR 237:(2012) 5 SCC 201 – referred to.

Case Law Reference

G	(2002) 2 SCC 287	referred to	Para 7
	2009 (7) SCR 623	referred to	Para 8
	2012 (10) SCR 540	referred to	Para 9
	(2013) 14 SCC 637	referred to	Para 10
	2015 (6) SCR 960	referred to	Para 10
	2012 (5) SCR 237	referred to	Para 12
H	2012 (9) SCR 244	referred to	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 486 of 2016.

From the Judgment and Order dated 24.05.2013 of the High Court
of Judicature at Allahabad in CRLR No. 4377 of 2011.

Dr. V. P. Appan, Advocate for the Appellants.

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Ms. Archana Singh and Abhish Kumar, Advocates for the
Respondents.

The Judgment of the Court was delivered by

R. K. AGRAWAL, J. 1. Leave granted.

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2. This appeal is directed against the final judgment and order
dated 24.05.2013 passed by the learned single Judge of the High Court
of Judicature at Allahabad in Criminal Revision No. 4377 of 2011 whereby
the High Court dismissed the revision filed by the appellant herein against
the judgments and orders passed by the Juvenile Justice Board and the
Court of District & Sessions Judge, Meerut dated 07.09.2011 and
04.10.2011 respectively. D

3. Brief facts:

(a) On 29.06.2011, one Shri Rajpal Singh (the complainant)-
Respondent No. 2 herein lodged a complaint with P.S. Kasana, Dist.
Gautambudh Nagar, informing that his son-Satender, who was residing
with his family at Greater Noida, was found dead in his house. E

(b) On the basis of the said complaint, a First Information Report
(FIR) being No. 360 of 2011 dated 29.06.2011 got registered under
Sections 302, 394, 504 and 506 of the Indian Penal Code, 1860 (in short
'the Code') at P.S. Kasana, Dist. Gautambudh Nagar. F

(c) During investigation, the appellant herein got arrested on
05.07.2011 with regard to the crime in question and was produced before
the Juvenile Court and was remanded and kept in Juvenile Home.

(d) The father of the appellant-accused filed an application before
the Juvenile Justice Board stating that the date of birth of the appellant-
accused is 13.09.1995. The application on behalf of the appellant-
accused for proving his juvenility was supported with various school
certificates issued by the competent authorities from time to time. G

(e) The Juvenile Justice Board, after considering the evidence on H

A record came to the conclusion that the date of birth, as recorded in various School Certificates, submitted by the father of the appellant-accused on his behalf, is doubtful and the juvenile was referred to the Medical Board for determination of age.

(f) On 23.08.2011, the Office of the Chief Medical Officer, Meerut, opined that the age of the appellant-accused is about 19 years. The charge sheet in the case was filed on 07.09.2011 before the Court of Juvenile Justice Board (in short 'the Board'), Meerut. The Board, placing reliance on the opinion of the Medical Board, vide order dated 07.09.2011, held that the appellant-accused is a major and accordingly, transferred the case before the Chief Judicial Magistrate, Gautambudh Nagar.

(g) Aggrieved by the order dated 07.09.2011, the appellant-accused preferred an appeal before the District & Sessions Judge, Meerut by filing Criminal Appeal No. 319 of 2011. Learned Additional Sessions Judge, Meerut, vide order dated 04.10.2011, dismissed the appeal filed by the appellant-accused.

(h) Being aggrieved by the orders dated 07.09.2011 and 04.10.2011, the appellant-accused preferred a revision before the High Court. Learned Single Judge of the Allahabad High Court, vide judgment and order dated 24.05.2013, dismissed the revision filed by the appellant-accused.

(i) Aggrieved by the order dated 24.05.2013, the appellant-accused has preferred this appeal by way of special leave before this Court.

4. Heard the arguments advanced by Dr. V. P. Appan, learned senior counsel for the appellant-accused and Mr. R. Dash, learned senior counsel for the State and perused the records.

F Points for consideration:

5. The only point for consideration before this Court is whether in the facts and circumstances of the present case when the date of birth mentioned in the matriculation certificate is doubtful, the ossification test can be the last resort to prove the juvenility of the accused?

G Rival Submissions:

6. Dr. V. P. Appan, learned senior counsel appearing for the appellant-accused contended before this Court that the appellant-accused was arrested on 05.07.2011 and produced before the Juvenile Court and was remanded and kept in Juvenile Home. The father of the appellant-accused filed an application before the Board stating that the date of

birth of the appellant-accused is 13.09.1995. He supported his claim by producing a copy of the Secondary School Certificate for Class Xth issued by the Controller of Examinations of Secondary School Examination (Session 2009-2011) wherein the date of birth of the appellant-accused was shown to be 13.09.1995 and on the date of occurrence, i.e., on 29.06.2011, he had not attained majority or was below 18 years of age. It was further contended by learned senior counsel that the appellant-accused studied from Class 1st to 5th in the Saint Joseph School, Greater Noida. He studied in Class 6th and 7th in Kisan Vaidik Junior High School. Though the date of birth is wrongly mentioned in the records therein as 17.09.1994, affidavit for correction of the same had been filed with the competent authority. Learned senior counsel for the appellant-accused further contended that the procedure for determination of the age is to be followed in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the JJ Act') which was not scrupulously adhered to. The courts below should have acted on the certificate issued by the Controller of Examinations, Secondary School Examination wherein the date of birth of the appellant-accused is recorded as 13.09.1995. Learned senior counsel further stressed upon the fact that the entry relating to the date of birth entered in the marks sheet is one of the valid proofs of evidence for determination of age of a person. Finally, learned senior counsel contended that the Board committed grave illegality in directing the ossification test of the appellant-accused for determining the age on the face of undisputed certificates issued by the two schools wherefrom it is clear that the date of birth of the appellant-accused is 13.09.1995.

7. In support of his claim, learned senior counsel for the appellant-accused relied upon a decision of this Court in *Rajinder Chandra vs. State of Chhattisgarh and Another* (2002) 2 SCC 287, wherein it was held as under:-

“5....on a review of judicial opinion, held that while dealing with the question of determination of the age of the 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 said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases.....”

- A 8. He further relied upon a decision of this Court in *Hari Ram vs. State of Rajasthan & Another* (2009) 13 SCC 211 in which it was held as follows:-
- B “27. Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the court or Board after examining and obtaining any other documentary proof referred to in sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised.”
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- D 9. Further, reliance was placed upon *Ashwani Kumar Saxena vs. State of Madhya Pradesh* (2012) 9 SCC 750.
- E 10. While referring to a decision of this Court in *Mahadeo s/o Kerba Maske vs. State of Maharashtra and Another* (2013) 14 SCC 637, learned senior counsel submitted that only in the absence of alternative methods described under Rules (12)(3)(a)(i) to (iii), the medical opinion can be sought for and in no other case. He further relied upon a decision of this Court in the *State of Madhya Pradesh vs. Anoop Singh* (2015) 7 SCC 773 and contended that the decision in the case of *Mahadeo (supra)* has been followed.
- F 11. On the other hand, Shri R. Dash, learned senior counsel for the State submitted that in the Secondary School Examination Certificate, the date of birth mentioned is 13.09.1995 but this date of birth is not correct. In the statement given by the father of the appellant-accused before the Board that the appellant-accused studied in Saint Joseph School, Greater Noida from 1st to 5th standard, the date of birth mentioned in the school form is 13.09.1996 and it bears father’s signature. Thereafter,
- G he studied in Kisan Vaidic Junior High School, Latifpur wherein the date of birth is recorded as 17.09.1994. After leaving this school, the appellant-accused again took admission in Saint Joseph School in 8th standard. Learned senior counsel for the State submitted that a report from the Saint Joseph School was produced before the Board in which it was
- H mentioned that his date of birth was recorded in the register on the basis

of transfer certificate issued by Kisan Vaidic Junior High School. An official of the Kisan Vaidic Junior High School was examined before the Board who stated on oath that the appellant-accused never studied in that school and the alleged certificate was not issued by the School authorities. Learned senior counsel for the State further contended that since the transfer certificate on the basis of which entries were made in Saint Joseph School was not found to be genuine, the date of birth mentioned in the Secondary School Certificate was also not at all reliable.

12. In support of his claim, learned senior counsel relied upon a decision in *Om Prakash vs. State of Rajasthan and Another* (2012) 5 SCC 201 wherein it was held as under:-

“22. 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 for this special protection under the Juvenile Justice 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.

23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.”

A 13. Learned senior counsel further referred to a decision in *Abuzar Hossain alias Gulam Hossain vs. State of West Bengal* (2012) 10 SCC 489, wherein a three-Judge Bench of this Court had summarized the position for determining the juvenility of an accused. In para 39.3 of the judgment, it has been held as under:-

B “39.3. As to what materials would prima facie satisfy the court
C and/or are sufficient for discharging the initial burden cannot be
D catalogued nor can it be laid down as to what weight should be
E given to a specific piece of evidence which may be sufficient to
F 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.”

G 14. He further stated that in view of the documents produced by
the father of the appellant-accused and the statement given by the
concerned school, the date of birth of the appellant-accused is
unsubstantiated, therefore, the Board rightly directed for conducting the
ossification test of the appellant-accused. Learned senior counsel for
the State finally submitted that the Court of Sessions as well as High
Court rightly rejected the claim of the appellant-accused.

Statutory Provisions:

H 15. In view of the above, it is useful to refer certain relevant
provisions of the JJ Act which are as under:-

“2. Definition.—

(k) “juvenile” or “child means a person who has not completed eighteenth year of age;

(l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

“[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 recognized 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 sentence, if any, passed by a court shall be deemed to have no effect.]”

Juvenile Justice (Care and Protection) Rules, 2007

“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

- A 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-
- B (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;
- C (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.
- D 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.
- E 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.
- F (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.
- G (5) Save and except where, further inquiry or otherwise is required,
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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. A

(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.” B

16. From a reading of the aforementioned statutory provisions, it is clear that under Section 7A of the JJ Act, the court is enjoined to make an inquiry and take such evidence as may be necessary to determine the age of the person who claims to be a juvenile. However, under Rule 12, the Board is enjoined to take evidence by obtaining the matriculation certificate if available, and in its absence, the date of birth certificate from the school first attended and if it is also not available then the birth certificate given by the local body. In case any of the above certificates are not available then medical opinion can be resorted to. However, if the Board comes to the conclusion that the date of birth mentioned in the matriculation certificate raises some doubt on the basis of material or evidence on record, it can seek medical opinion from a duly constituted medical board to determine the age of the accused person claiming juvenility. C
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17. It is also pertinent to mention here the order passed by the Chief Medical Officer, Meerut with regard to the age of the appellant-accused which reads as under:- F

“OFFICE OF THE CHIEF MEDICAL OFFICER, MEERUT

No. M.7/CMO/11-7939

Dated: 23.08.11

AGE CERTIFICATE

Certified that I examined Sh. Parag Bhati S/o Anil Bhati R/o C-16, Swarn Nagar, Greater Noida, P.S. Kasna, Gautambudh Nagar, U.P. brought by /identified Ct. 506 Kiranpal Singh, Police Line, Meerut referred by for ascertaining his/her present age required for the purposes of Juvenile Justice Board, Meerut vide his letter No./endorsement No.dated H

ASh. Parag Bhati states that his/her age is about 16 years at present. He brought no documentary evidence to substantiate his age. He also states that he has not obtained any certificate from anywhere about his age. On examination: Height 171 Cms., Weight 56 Kgs., Teeth 15/16 permanent.

B Tiny Black mole on lateral aspect of middle phalanges of left little finger.

On X-ray Examination Plate No. 10569/70/71/72 dated 08.08.11 done at P.L. Sharma Hospital, Meerut (report given by Dr. Deepak Saxena) Senior Radiologist P.L. Sharma Hospital, Meerut)

C Shows:-

1. XR (1) elbow, @ knee- All epiphyses around the joints are fused.

2. XR (L) wrist-epiphyses of lower end of radius and ulna are fused visible scar.

D 3. XR @ Clavicle medial end-epiphyses around joints is not fused. Opinion: on the basis of the above, general appearance and physical built I am of the opinion that the age of Shri Parag Bhati is about 19 years.

Chief Medical Officer”

E 18. The only question to be determined is whether the appellant-accused was juvenile or not on the date of occurrence, i.e., 29.06.2011. From the documents on record, it is seen that the father of the appellant-accused submitted an application stating that his son passed High School examination from Vishwa Bharti Public School, Greater Noida and as per the school records his date of birth is 13.09.1995. It was further

F informed that the appellant-accused studied from Class 1st to 5th in Saint Joseph School, Greater Noida and studied Class 6th and 7th in Kisan Vaidik Junior High School, Latifpur. Again in Class-8th, he studied in Saint Joseph School. Though the date of birth mentioned in the records of the above school is 17.09.1994, the father of the appellant claimed it to be wrong and submitted that an affidavit had been filed for its

G correction. During cross-examination, it was further admitted that the date of birth in the transfer certificate of Kisan Vaidik Junior High School is recorded as 17.09.1994 whereas it is recorded as 13.09.1996 in the Saint Joseph School. In this manner, the date of birth of the appellant-accused is 13.09.1995 in the records of the High School and 17.09.1994

H is mentioned in the records of Kisan Vaidik Junior High School. If the

date of birth mentioned in such certificate is proved wrong then it cannot be relied upon. A

19. This fact is further corroborated with the affidavit filed by the State which reads as under:-

“9. That the father of the petitioner filed an application before the Juvenile Justice Board stating therein that the date of birth of the petitioner is 13.09.1995. The application on behalf of the petitioner for declaring him juvenile was supported with the following documents along with affidavit of his father. B

(i) The Secondary School Certificate for class X issued by Controller of Examinations of Secondary School Examination for the year (2009-2011), where the date of birth is mentioned as 13.09.1995. C

(ii) The petitioner (juvenile) had studied from class I to 5 in Saint Joseph School, where his date of birth is mentioned as 13.09.1996. And the form bears the signature of his father. D

(iii) The petitioner date of birth in Transfer Certificate of Kisan Vaidik Junior High School is also mentioned as 17.9.1994.

(iv) The petitioner (juvenile) alleges to had studied upto class VI in Aster Public School, JA-1, Silver Oak estate, Delta-II, Greater Noida. In the registration form of this school, the date of birth is mentioned as 13.09.1995. E

That while considering the aforesaid documents the Juvenile Justice Board came on the conclusion as follows :-

a. In the evidence Smt. Jyotsana Bhati, Principal, Arayans Academy, Mandi Shyam Nagar was summoned according to her statement Parag Bhati never studied in their school. However, it has been mentioned in the column No. 14 of T.C. of Kisan Vaidik Junior High School, that earlier institute of Parag Bhati was Aryans Academy Mandi Shyam Nagar. Similarly, Manohar Lal Sharma, C.W. 03, Assistant Teacher, Kisan Vaidik Junior High School, Latifpur has stated in his statement that the Transfer Certificate available at the case file was not issued by their school and the same is forged. Parag Bhati never studied in their school. F G

b. Smt. Rachna D/o Devender, Principal of Saint Joseph School has sent a certificate in writing according to which Parag Bhati H

A has studied in their school from 04.04.2008 to April 2009 only. Before that, he never studied in their school. However, Anil Bhati father of the juvenile has stated in his statement that he has studied in Saint Joseph School from class 1 to 5.

B c. Therefore, on the basis of documents available at the case file, date of birth of Parag Bhati is mentioned 13.09.1995 in the documents of High School and 17.09.1994 is mentioned in the document of Kisan Vedic Junior High School. On 30.08.2011, the board, has conducted proceedings to register case against Anil Bhati for producing forged evidence and giving false statement before the Hon'ble Chief Judicial Magistrate, Meerut.

C In view of the above facts and circumstances of the case, all the documents before class 10th produced on behalf of applicant are forged.”

D 20. The Board summoned Smt. Jyotsana Bhati, Principal, Aryans Academy Mandi Shyam Nagar and she stated that the appellant-accused never studied in their school. It may be mentioned here that in Column No. 14 of Transfer Certificate of Vaidik Junior High School, the name of the earlier institute attended was Aryans Academy Mandi, Shayam Nagar. Shri Manohar Lal Sharma, Assistant Teacher, Kisan Vaidik Junior High School, Latifpur was also summoned who stated on solemn affirmation that the transfer certificate available in the case file was not issued by the school and that is forged as the appellant-accused never studied in their school. Similarly, the Principal, Saint Joseph School, sent a certificate in writing stating therein that the appellant-accused had studied in their school from 04.04.2008 to April, 2009 only and before that he never studied in their school.

G 21. As the date of birth which is alleged to have been recorded in Saint Joseph School is on the basis of the transfer certificate issued by the Kisan Vaidik Junior High School, Latifpur and such transfer certificate has been found to be forged, therefore, the Board came to the conclusion that the date of birth mentioned in the certificate issued by the Secondary School Examination mentioning it as 13.09.1995 on the basis of Vishwa Bharti Public School, Greater Noida cannot be believed. It may also be mentioned here that the date of birth which was recorded in Vishwa Bharti Public School, Greter Noida was on the basis of the date of birth recorded in Saint Joseph School and the date of birth recorded in the Saint Joseph School had been found to be without having any basis. On

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30.08.2011, the Board, on merits, conducted proceedings to register case against Anil Bhati-father of the appellant-accused for producing forged evidence and giving false statement before the Court which fact has already been proved that the documents which were produced on behalf of the appellant-accused were forged.

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22. Due to this discrepancy, the Medical of the appellant-accused got conducted by the Medical Board wherein on 23.08.2011, his age was assessed about 19 years and the Board fixed the age of the appellant-accused as 18 years, 10 months and 6 days and he was ordered to be tried by the Session Court. The Board did not give the benefit of one year as provided in Rule 12 of the Rules in favour of the appellant-accused on the ground that the complainant-Respondent No. 2 herein had filed the photocopy of Panchayat Electoral Roll 2009 Development Block Dankaur, according to which, the age on 01.01.2009 has been mentioned as 19 years and the date of the incident is 29.06.2011. Therefore, the Board rightly did not give the benefit of one year to the appellant-accused under the Rules.

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23. We may also mention here that before this Court, an entirely new case has been set up by the appellant-accused that he studied up to Class 6th in Aster Public School, Greater Noida, and thereafter, in Mussoorie Modern School, Mussoorie and lastly studied for Class 9th and 10th in Vishwa Bharti Public School, Greater Noida. The plea that the appellant-accused studied in Aster Public School and Mussoorie Modern School was never raised before the Board for reasons best known and the appellant cannot take advantage of a new case being set up before this Court for determination of age under the JJ Act.

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24. While considering a similar question, this Court in *Ashwani Kumar (supra)* held as under:-

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“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a

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A panchayat (not an affidavit but certificates or documents). The
question of obtaining medical opinion from a duly constituted
Medical Board arises only if the abovementioned documents are
unavailable. In case exact assessment of the age cannot be done,
then the court, for reasons to be recorded, may, if considered
B necessary, give the benefit to the child or juvenile by considering
his or her age on lower side within the margin of one year.

33. 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 sub-rule (5) of 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 Rule 12. Further, Section 49 of the JJ
Act also draws a presumption of the age of the juvenility on its
C determination.

D 34. Age determination inquiry contemplated under the JJ Act and
the 2007 Rules has nothing to do with an enquiry under other
legislations, like entry in service, retirement, promotion, etc. There
may be situations where the entry made in the matriculation or
equivalent certificates, date of birth certificate from the school
E 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
F 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.

(emphasis supplied by us)

G 25. 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
H 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.

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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.

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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.

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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.

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