

**Mor Pal Vs. State**

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**Court :** Delhi

**Decided On :** Feb-25-2013

**Judge :** Kailash Gambhir

**Appellant :** Mor Pal

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 3962/2012  
Judgment delivered on:

25. In February, 2013 MOR PAL ..... Petitioner Through Mr.SaurabhKansal, Adv. versus STATE ..... Respondent Through Mr. Naveen Sharma, APP for the State. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR 1 By this petition filed under Section 482 of Code of Criminal Procedure, 1973 the petitioner seeks to challenge the impugned order dated 12.10.2010 passed by the Court of Additional Sessions Judge, Delhi whereby the learned Additional Sessions Judge dismissed the application filed by the petitioner accused under Section 6, 7, 18 and 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 for sending his case to the Juvenile Justice Board.

2. The petitioner, who has claimed himself to be a juvenile at the time of commission of the alleged offence, is accused in FIR bearing No. 78/2009 registered against him along with the co-accused persons under Sections 365/302 IPC. This FIR was registered at the instance of one Mr.Durgapal, brother of

deceased Arun Pal. The police has also completed its investigation and chargesheet has been filed against the accused persons for the offences punishable under Section 365/302/120B/34 IPC. The petitioner had moved an application before the Sessions Court under Sections 6, 7, 18 and 49 of Juvenile Justice (Care and Protection of Children) Act, 2000 for sending his case to Juvenile Justice Board on the ground that he was aged about 16 years at the time of commission of the alleged offence. The said application, moved by the petitioner, was dismissed by the learned Additional Sessions Judge vide order dated 12.10.2010 and the said order is challenged by the petitioner in the present petition.

3. To prove his juvenility at the time of commission of the alleged offence, the petitioner has proved on record his school leaving certificate as Exhibit DW1/B and the relevant entries in the admission register of the school as Exhibit DW1/A. The school leaving certificate of the petitioner was also verified by his Head Master vide his report dated 24.09.2009 wherein the date of the birth of the petitioner has been verified to be 2.1.1993. Along with the said report, the certificate dated 23.09.09 issued by the Principal Anokhey Ram PrathmikVidyalaya, GheraMazra, Khamaria, Jaipur Shajahanpur was also annexed. To prove school records the petitioner produced DW1, Shri Vinay Kumar Hans, Principal Incharge of Primary school, who produced the original admission register of the school wherein the name of the petitioner was found registered at Sr. No. 127 and his date of birth in the relevant column as 2.1.1993. DW1 also proved school leaving certificate as Exhibit DW1/2B after identifying the signatures of the previous Principal on the said original certificate at some point X.

4. Learned Trial Court after referring to the cross-examination of DW1 reached to the conclusion that the school records produced by him did not inspire any confidence and they did not appear to be genuine and authentic. The learned Trial Court also found that the said witness did not produce admission form of the petitioner although as per the deposition of DW1 admission form is filled by the student at the time of seeking admission. The Court further found that the said witness in his cross-examination had admitted that the date of birth of the children admitted in the school from Sr. No. 127 to 148 is 2nd of Month, which was found

not possible from any standard of normal prudent man. The court therefore directed the ossification test of the petitioner and as per the test which was conducted on 17.12.2009, the petitioner was found more than 20 years of age at the time of his examination. The learned Trial Court thus relying upon the said test and after giving benefit of two years to the petitioner, held him to be of more than 18 years of age at the time of commission of the alleged offence.

5. Assailing the said order, Mr. Saurabh Kansal, Counsel appearing for the petitioner submitted that learned Trial Court has ignored the procedure for determining the age of the juvenile in conflict of law as laid down in the Juvenile Justice (Care and Protection of Children) Rules, 2007 framed under the Juvenile Justice (Care and Protection of Children) Act, 2000 whereunder the Court has to first examine the documentary evidence and it is only in the absence of availability of the evidence in terms of sub clause (i), (ii) or (iii) of sub-clause (a) of Rule 12(3) of the Juvenile Justice Act, 2000, that the Court has to place reliance on the ossification test. Counsel also argued that the petitioner had produced school leaving certificate as Exhibit DW1/B, entries in the school register as Exhibit DW1/A, certificate issued by the Principal and all these documents were proved by the petitioner through the evidence of the Principal of the school who entered the witness box as DW1. Assailing the finding of the learned Trial Court that there could not have been so many admissions on the same day, counsel argued that it is not unusual, if all the children who took admission from Sr. No. 127 to 148 were born on the same date i.e. 2nd of the Month. Counsel further argued that the learned Additional Sessions Judge has also wrongly held that the admission register was not signed by anyone as the same was duly signed by authorized official of the school and DW1 in his cross examination duly confirmed this fact. Counsel also argued that the Learned Additional Sessions Judge also fell in grave error while calculating the age of the juvenile as per the ossification test. Contention of the counsel for the petitioner was that even if the age of the petitioner on the date of his examination was more than 20 years then also his age would range between 19-21 in which case also the lower limit would be 19 as on 17.12.2009 and after giving concession of one year as per the Juvenile Justice Rules, 2007, the age as on 17.12.2009 would come to be 18 and about 17 as on 8.2.2009 i.e. at the time of commission of offence. Counsel submitted that it is a settled legal position that

medical test to determine the age of juvenile is not a reliable method and should only be resorted to as a last resort and even thereafter it has to be considered along with the other evidence available on record. Counsel also submitted that the Juvenile Justice(Care and Protection of Children) Act, 2000 is a welfare legislation and, therefore, while assessing the age of the juvenile, the Court cannot adopt a hyper technical approach and when two views are possible only a lenient view in favour of the accused may be adopted. In support of his arguments, counsel for the petitioner place reliance on the following judgments:1. BablooPasi v. State of Jharkhand, AIR 200.SC 31.2. Arnit Das v. State of Bihar, (2000) 5 SCC 48.6. Present petition has been strongly opposed by the State. Mr.Navin Sharma, APP for the State contended that learned Additional Sessions Judge has not committed any illegality or perversity in passing the impugned order dated 12.10.2010. Counsel submitted that in the absence of genuine or authentic record proved by the petitioner, the learned Additional Sessions Judge rightly assessed the age of the petitioner based on the ossification report. Counsel also submitted that as per the requirement of Section 12(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Section 35 of the Evidence Act, 1872, the entry of the school record must be proved in accordance with the law and not through any record which cannot inspire trust or confidence of the Court. In support of his arguments, APP for the State placed reliance on the following judgments:1. Ram Suresh Singh v. Prabhat Singh and Another, (2009) 6 SCC 68.2. PuneetVasudeva v. State and Anr., 2009 [2] JCC 141.7. I have heard learned counsel for the parties at considerable length and given my anxious consideration to the arguments advanced by them. I have also gone through the records of the Trial Court.

8. Before I proceed to deal with the rival contentions raised by the counsel for the parties and the factual situation of this case, it would be appropriate to first reproduce the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also the Juvenile Justice (Care and Protection of Children) Rules, 2007, which are as under:Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000- Procedure to be followed when claim of juvenility is raised before any court(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take

such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act. (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect. Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007-Procedure to be followed in determination of Age (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose. (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail. (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking

into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned. (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in subrule (3) of this rule. (6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in subrule(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.

9. Thus, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 envisages the age determination inquiry concerning a juvenile in conflict with law to be conducted by the court or the Juvenile Justice Board, as the case may be. What documentary evidence should have precedence over the other has been laid down in this very rule itself. In the order of priority, the first precedence has been given to matriculation or equivalent certificates, if available; and if such a certificate is duly proved on record in accordance with law then such a certificate may itself be sufficient to determine the age of the offender. In the absence of matriculation or equivalent certificate, the second priority has been given to date of birth certificate from the school (other than a play school) first attended; and in the absence of these two certificates, the third priority has been given to the birth certificate given by a corporation, municipal authority or a Panchayat. Under Rule 12 (3)(b), in the absence of the said three documentary evidence of clause (a), the Court or the Board can seek medical opinion from any duly constituted Medical

Board in order to determine the age of offender by conducting an ossification test. This Rule 12(3)(b) further envisages that in case the exact assessment of the age cannot be done by the Court or the Board then for the reasons to be recorded by the court it may give benefit to the offender by considering his/ her age on lower side within the margin of one year and while passing such order the court may take into consideration such evidence as may be available on record or the medical opinion as the case may be and record a finding in respect of his age based on either of the evidences produced before the court as specified in any of the clause (a)(i),(ii),(iii) or in the absence whereof, the medical evidence in terms of clause (b) which shall be a conclusive proof of the age as regards such a Juvenile in conflict with law. The aforesaid order of precedence attached to the various categories of documents has to be scrupulously followed by the courts and it is only in the absence of a documentary evidence of first category that the court has to look for the documentary evidence of second category or third category and finally the medical proof.

10. It would be worthwhile here to refer to the judgment of the Apex Court in the case of *Ashwani Kumar Saxena v. State of M.P.* reported in 2012 (9) Scale 90 which has extensively dealt with the previous judgments and crystallized the entire legal position with respect to the procedure to be followed for determination of age of an offender claiming himself to be a juvenile at the date of commission of the alleged offence. The Court in the said judgment held that none of the previous judgments as referred to therein had examined the scope, meaning and content of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and the nature of inquiry contemplated in these provisions. Dealing with the scope of Section 7A of the Act, the Court held that Section 7A obliges to make an inquiry under the Juvenile Justice Act and not an inquiry, investigation or a trial under the Code of Criminal Procedure. The Court also observed that the procedure to be followed under the Juvenile Justice Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the Juvenile Justice Rules, 2007 and thus we cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court

exercising powers under Section 7A of the Act. The Court further held that the Court, Juvenile Justice Board or a Committee functioning under the Juvenile Justice Act is not expected to conduct such a roving enquiry and to go behind the certificates to examine the correctness of such documents maintained during the normal course of business and it is only in cases where such documents or certificates are found to be fabricated or manipulated, that the Court, the Juvenile Justice Board or the Committee need to go for medical test for age determination. Explaining the scope of Rule 12 (3) (a) (i) to (iii) of the said Juvenile Justice (Care and Protection of children) Rules, 2007, the Court took a view that the said Rules enable the Court to seek evidence strictly in order of priority as laid down in the said Rule and the question of obtaining medical opinion from a duly constituted medical board can arise only if the documents as mentioned in Rule 12 are not available. The relevant paragraphs of the said judgment are referred as under: 27. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J.

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

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

has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word 'inquiry' has not been defined under the J.J.

Act, but Section 2(y) of the J.J.

Act says that all words and expressions used and not defined in the J.J.

Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

29. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. "Inquiry" as defined in Section 2(g), Code of Criminal Procedure reads as follows: "Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary. "Investigation" as defined in section 2(h), Code of Criminal Procedure reads as follows: Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. The expressions "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in sections 2(g) and 2(h) of the Code of Criminal Procedure.

30. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. We find in very many cases that the Court /the J.J.

Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J.

Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

31. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

32. Consequently, the procedure to be followed under the J.J.

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

33. We also remind all Courts/J.J.

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

34. "Age determination inquiry" contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the

court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

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

Act also draws a presumption of the age of the Juvenility on its determination.

11. It is a settled legal position that an offender was a Juvenile or not on the date of commission of offence is essentially a question of fact that can be considered only when proved on record in accordance with law. The Apex Court in *JyotiPrakashRaiv. State of Bihar* reported in (2008) 15 SCC 22.held that Juvenile Justice Act, 2000 is indisputably a beneficial legislation, but, howeverthe principles of beneficial legislation are to be applied only for the purpose of interpretation of the Statue and not for arriving at a conclusion as to whether a person is Juvenile or not. After referring to a decision in the case of *Ravinder Singh Gorkhiv. State of UP*, (2006) 5 SCC 584,the Apex Court observed that determination of the date of birth of a person before court of law, whether in a civil proceedings or criminal proceedings, would dependupon the facts and circumstances of each case and such a date of birth has to be determined on the basis of materials on record. The

relevant paragraphs of the said judgment are reproduced as under:

9. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on records by the parties. In absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Indian Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.

17. In *Ravinder Singh Gorkhi v. State of U.P.*, it was held:

21. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case. It was furthermore held:

38. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the

prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

39. We are, therefore, of the opinion that until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and circumstances of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. In this case, the appellant had never been serious in projecting his plea that he on the date of commission of the offence was a minor. He made such statement for the first time while he was examined under Section 313 of the Code of Criminal Procedure.

40. The family background of the appellant is also a relevant fact. His father was a "Pradhan" of the village. He was found to be in possession of an unlicensed firearm. He was all along represented by a lawyer. The court estimated his age to be 18 years. He was tried jointly with the other accused. He had been treated alike with the other accused. On merit of the matter also the appellant stands on the same footing as the other accused. The prosecution has proved its case. In fact no such plea could be raised as the special leave petition of the persons similarly situated was dismissed when the Court issued notice having regard to the contention raised by him for the first time that he was a minor on the date of occurrence.

12. Thus, the three documentary evidences as envisaged under Rule 12(3) (a) (i) (ii) (iii) of the Juvenile Justice(Care and Protection of Children) Rules, 2007 are the relevant facts to determine the age of the offender but before they are admitted in evidence they must be proved in accordance with law. Section 35 of the Indian Evidence Act, 1872 lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the

relevant fact. To render a document admissible under Section 35 of the Indian Evidence Act, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty especially enjoined by law. An entry relating to a date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded as held by the Apex Court in the case of *Birad Mal Singhvi v. AnandPurohit*, 1988 (Supp) SCC 604. It would be thus manifest that for proving any entry in the admission register of a school, the offender claiming to be a juvenile has to prove the said entry in accordance with law and based on the appreciation of evidence, the Court or the Board can arrive at a finding as to whether there is a correct entry of date of birth made in such an admission register. The Honble Supreme Court in *Arnit Das v. State of Bihar*, (2000) 5 SCC 488 observed that while dealing with a question of determination of age of an accused for the purpose of finding out whether he is a juvenile or not, a hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of his plea that he was a juvenile at the time of commission of the offence. The Apex Court further observed that while taking a view, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The Apex Court also gave a word of caution 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 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.

13. Discussing the need for the court to act cautiously while examining the documents as envisaged under Rule 12 (3) (a) (i), (ii), (iii) so as to determine the age of the offender, the Juvenile Justice (Care and Protection) Act, 2000 is a piece of social welfare legislation aimed at handling the children below the age of 18 years of age accused of committing crimes so as to draw a line of distinction

between them and the adults in terms of treatment and consequences of the offences committed. The germination of the said act is based on the premise that the children of an impressionable age are unaware of the import of their actions as compared to adults and to brand them as criminals meting out harsh punishment would scar them for life vandalizing their outlook towards life and their future. The determination of the age of a person accused, whether juvenile or not can sway and change his fate as the punishment awarded to a juvenile vis a vis an adult for the same offence varies considerably. In other words, an offender who may be accused of a serious crime like death or rape, who otherwise deserves harshest punishment under the ordinary penal law might be simply sent to a correction home for a period of three years if found to be less than 18 years of age under the Act. Such difference in treatment of juvenile is based on the rationale that the age factor plays a vital role in behavior of a person. There is a greater chance of a young criminal, a minor succeeding in transforming his life and becoming a more responsible person once he gets an opportunity of reformation, than a person who is a major.

14. Hence, the application of the yardsticks to determine the age of an offender is at times an arduous task enjoined upon the courts of law and therefore the responsibility sacrosanct. In the eventuality of the fact that a mere decision as to the age of the offender at the time of the offence, of either being less or more than 18 years, can seal the fate of a person, the courts are therefore expected to decide the issue with utmost care and sensitivity, involving meticulous deliberation and diligence. It is an unfortunate but a bitter reality, that a seemingly large number of provisions on the statute book that are enacted to serve an honorable and equitable purpose are arm twisted for ulterior motives, and this provision is no different. The courts thus have to be vigilant to prevent its misuse by those trying to evade punishment under the garb of juvenility. The courts must carefully scrutinize the documentary evidence in support of the offenders claim of juvenility, placed on record by him, more so, when the ossification test has been held to be a non-conclusive test. The court is not to act as a mute spectator to blindly trust the matriculation or school certificates produced by the offender but must make every endeavour to ascertain the genuineness of such documents by directing the offender to lead evidence in support of it. The courts must not act obliviously and

overlook the practical realities prevailing in our country with respect to the poor school administration, especially in schools located in the rural areas and also the aspect that rackets of engineering fake certificates are not uncommon in our country. Due consideration must be given to ascertain as to whether the manner in which the certificates are prepared by the school authority is trustworthy; whether the officer of the admission department, who may be illiterate/ semi-literate in most of the cases and literate in few, has made the entries in the record book meticulously; whether the record books have been kept and retained by the school authority in a safe and secure custody immune from any kind of manipulation or tampering. Such degree of care and caution to be exercised by the courts may vary from case to case, not to dwell so as to threadbare examine every document but also not to let the offender take a blanket protection under the said Act.

15. In the aforesaid background of the legal position, let me now revert back to the facts of the present case. Petitioner herein is an accused in a murder case facing charges under Section 365/302/120B/34 IPC. The petitioner claims himself to be a Juvenile having been born on 2.1.1993. To prove his date of birth as 2.1.1993 he has placed on record the relevant entries in the admission register as DW1/A and his school leaving certificate as DW1/B. To prove the said documentary evidence, the petitioner has produced DW1, Shri Vinay Kumar Hans, Principal Incharge of Primary School Ghera Mazara Khamaria, Distt. Shahjanpur UP. This is a school where the petitioner was admitted in 1st standard. Petitioner has also placed on record verification report dated 24.9.2007 duly signed by Head Master certifying that the petitioner was admitted in school on 26.7.2002 and studied till 11.5.2004. This verification certificate also certifies that the school leaving certificate was given by the principal to the father of the petitioner on 22.5.2009. The said witness DW1 produced the admission register of the school wherein at serial No.127 the name of the petitioner is entered and his date of birth is mentioned as 2.1.1993. This witness proved the relevant pages from the admission register as DW1/A. This witness also proved school leaving certificate as DW1/B. This witness however failed to prove the said verification report. The testimony of this witness has not been believed by the Ld. Additional Sessions Judge on the premise that the same does not inspire any confidence. The Additional Sessions Judge also observed that the date of birth of the children admitted in the school as

per the admission register produced on record from serial no. 127 to 148 is the second of the month which is not possible by any stretch of imagination. The court also found that although the said witness has admitted that admission form is filled at the time of admission of the child to the school but no such admission form was produced by the witness before the court.

16. To test the said observations of the Learned Additional Sessions Judge, this court also examined the records of the trial court. While examining the records, not only it was found that in all the entries from serial no. 127 to 148 in the admission register of the school, the date of the child is invariably mentioned as 2nd day of the month and that the name of the petitioner entered at serial No.127 appears with the name of his parents as Balak Ram and Ram Kanti, but intriguingly the name of same father Balak Ram appears even against the name of students Situ, Dharmender Singh and Parvesh Kumari born on 2.1.93, 2.2.94 and 2.2.94 registered against serial Nos. 128, 129 and 130, respectively. This admission register is the only record produced by the said principal and is in fact the sole basis for issuing the school leaving certificate. This court thus finds that against many entries there is a common name of father and it appears that the said school has not recorded correct details of the date of birth of the children, their parents name and other particulars. Even in the school leaving certificate proved on record, the age of the petitioner at the time of leaving the school has been stated to be 2.7.1993 which again cannot be possible as the child left the school after qualifying third standard. DW1 in his cross examination has duly admitted that admission form might have also been filled up at the time of seeking admission in the school but the same was not available in their school. He also admitted that at the time of admission the school requires the birth certificate of the child to be submitted but in the present case the witness could not tell as to whether birth certificate of the child was taken or not. The said witness also failed to disclose the name of the person as to who had signed the said register. The petitioner also failed to produce the witness who had filled up the admission register at the time of petitioner seeking his admission in the said school.

17. In such a scenario, this court does not find any infirmity, illegality or perversity Learned in the impugned order dated 12.10.2010 passed by the Additional

Sessions Judge who after disbelieving the school records produced by the offender placed reliance on the ossification test report to determine the age of the offender. But here arises another vital question i.e. Whether the ossification test has been conducted by the duly constituted Medical Board as per the mandate of Rule 12 (3) (b) of the Juvenile Justice (Care And Protection of Children) Rules, 2007. The said Rule envisages that to determine the age of the offender based on the ossification test, the report must come from a duly constituted Medical Board and not from any Single Member Team who alone may not be competent to give the correct opinion. After having perused the ossification report from the trial court records, I find that the same has been prepared and signed by a single doctor. Therefore, this matter deserves to be remanded back to the trial court with a direction to call for a fresh report from a duly constituted Medical Board of a Government Hospital comprising of a minimum of one dentist, one general physician and one radiologist and take a view on the age of the petitioner as per the fresh report of such duly constituted Medical Board in accordance with the settled principles of law.

18. With the above direction, the petition stands disposed of.

19. It is ordered accordingly. KAILASH GAMBHIR J.

February 25, 2013

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