

A GAURAV KUMAR @ MONU

v.

THE STATE OF HARYANA

(Criminal Appeal Nos. 283-285 of 2019)

B FEBRUARY 15, 2019

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

- Juvenile Justice (Care and Protection of Children) Rules,*
- C 2007 – r.12 – Juvenile, on the date of occurrence – Determination of – Applicability of r. 12 of the 2007 Rules – Held: Date of occurrence of the incident was 23/24.05.2000 on which date Rules 2007 were not enforced – Even on the date when the Sessions Judge submitted his report dated 08.05.2003 after holding inquiry, Rule 2007 was not in force – Rule 100 of 2007 Rules repealed the earlier Rule-2001 Rules – Thus, the relevant Rule occupying the field in the instant case were 2001 Rules – Rule 12 of 2007 Rules is not applicable – High Court had no occasion to consider the issue since it was not pressed by the appellant – In the interest of justice, the High Court to consider the question of juvenility of the appellant
- D – Thus, the matter remitted back for consideration – Juvenile Justice (Care and Protection of Children) Rules, 2001 – r. 22.
- E – Thus, the matter remitted back for consideration – Juvenile Justice (Care and Protection of Children) Rules, 2001 – r. 22.

Disposing of the appeals, the Court

- HELD:** 1.1 The submission of the appellant was that school certificate filed by him with date of birth 17.08.1982 was not even challenged, hence, on the strength of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 the said certificate ought to have been accepted by the Sessions Judge. The submissions raised by the appellant based on Rule 12(3) of 2007 Rules could have been considered in detail but in the instant case, there is no applicability of Rule 12 of 2007 Rules. The date of occurrence in the instant case is 23/24.05.2000 on which date Rule 2007 were not enforced. Even on the date when District and Sessions Judge submitted his report 08.05.2003 after holding inquiry, Rule 2007 was not in force. Rule 100 of

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2007 Rules repealed the earlier Rule of Juvenile Justice (Care and Protection of Children) Rules, 2001. Thus, the relevant Rule occupying the field and required to be looked into are 2001 Rules. [Paras 14-17] [379-G, H; 380-A]

1.2 The High Court had no occasion to consider the issue since the appellant has not pressed the issue before the High Court, thus, it would be appropriate that the High Court be requested to consider the question of juvenility of the appellant afresh before proceeding to decide the appeal. The interest of justice is served by setting aside the order passed by the High Court and remit the question of juvenility to the High Court for consideration. The High Court before deciding the appeal on merit may consider the question of juvenility on the basis of the relevant materials on record. The order passed by the High Court is set aside. [Para 18-19] [380-G, H; 381-A-C]

Shah Nawaz v. State of Uttar Pradesh and Another (2011) 13 SCC 751 : [2011] 9 SCR 859 ; *Abuzar Hossain alias Gulam Hossain v. State of West Bengal* (2012) 10 SCC 489 : [2012] 9 SCR 244 – referred to.

<u>Case Law Reference</u>		
[2011] 9 SCR 859	referred to	Para 7
[2012] 9 SCR 244	referred to	Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 283-285 of 2019.

From the Judgment and Order dated 30.01.2015 of the High Court of Punjab and Haryana at Chandigarh in CRM Nos.20593 of 2014, 26949 of 2014 and 3118 of 2015 in Crl. Appeal No. D-937-DB/2002.

Neeraj Jain, Sr. Adv., Prem Malhotra, Adv. for the Appellant.

Sanjay Kumar Tyagi, AAG, Vishwa Pal Singh, Ajay Pal Singh, Sandeep Singh, Vishal Chauhan, Dr. Amardeep Gaur, Advs. for the Respondent.

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- A The Judgment of the Court was delivered by
ASHOK BHUSHAN, J. Leave Granted.
- B 2. These appeals have been filed by the appellant challenging the Order dated 30.01.2015 passed by the Punjab & Haryana High Court dismissing three applications as withdrawn filed in Criminal Appeal No. 937 of 2002. Brief facts necessary to be noticed for deciding these appeals are:-
- C 3. The F.I.R. dated 24.05.2000 was registered under Section 323, 506, 148, 149, 170, 171 & 302 IPC against the appellant and other accused. The accused including the appellant were tried by Additional Sessions Judge, Hisar in Criminal Case No. 127 S.C. of 2005. The date of incident is intervening night of 23rd/24th May, 2000, in which incident one Sher Singh was beaten, who was taken to the hospital and after recording of his statement he died. The Sessions Judge vide his judgment and order dated 12.11.2002 convicted the appellant and one Hans Raj under Section 302 IPC read with Section 34 IPC by Order dated 14.11.2002 and both were sentenced for life with fine of Rs.500/-.
- D Criminal Appeal No.937 of 2002 was filed by the appellant against the Order of conviction and sentence in the High Court of Punjab & Haryana. One of the grounds taken in the appeal was that appellant was less than 18 years of age on the date of incident. The High Court
- E vide Order dated 24.03.2003 while issuing notice on the application for bail ordered that in the meanwhile a report of the learned Sessions Judge, Hisar be called as to whether Gaurav Kumar applicant was a Juvenile on the date of commission of offence and on the date of framing of charge. Learned Sessions Judge conducted an inquiry in which oral as well as documentary evidence was taken from both the parties. Before the Sessions Judge the statement of Davender s/o Hari Singh father of appellant was also recorded who also was cross examined. On behalf of the appellant a certificate from the Principal of St. Kabir School, Hisar was submitted wherein date of birth of Gaurav was recorded as 17.08.1982. A mark sheet issued by National Open School, New Delhi
- F of Secondary School Examination of Gaurav Ghatarwal was also submitted wherein date of birth was recorded as 17.08.1982. The State submitted Birth Certificate exhibit R-1 issued by the Registrar (Birth & Death) (Municipal Council, Haansi) where date of birth of son of Devender and Indu is recorded as 17.08.1981. The District & Sessions
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Judge, Hisar after considering the materials received in the inquiry including the oral evidence of father of the appellant held that date of birth of the appellant is 17.08.1981, hence, on the night intervening 23rd/ 24th May 2000, the applicant-appellant Gaurav Kumar was more than 18 years of age. The report was submitted to the High Court. Criminal Misc. Application No.20593 of 2014 was filed by the appellant under Section 391 read with Section 482 Cr.P.C. for placing on record the secondary/matriculation certificate of National Open School, Government of India New Delhi dated 23.05.2000, migration certificate of National Open School Government of India New Delhi dated 01.08.1999 and identity card of the appellant issued by the National Open University as additional evidence for taking the plea of applicant-appellant being juvenile on the date of the incident 24.05.2000. Another Criminal Application No. 3118 of 2015 in Criminal Misc. Application No.26949 of 2014 for placing on record additional affidavit of the appellant and also for placing on record true copy of Ration Card and for exemption from filing certified copy of Annexure A- 10. Criminal Application No. 20593 of 2014 came for consideration before the High Court on 30.01.2015. The High Court noticed the report dated 08/09.05.2003 sent from District and Sessions Judge, Hisar holding that Gaurav Kumar applicant was more than 18 years of age on the date of commission of offence. The High Court took into the consideration the birth certificate issued by Registrar (Birth & Death), Haansi where date of birth of appellant son of Davender and Indu was recorded as 17.08.1981. In view of the report of District and Sessions Judge, Learned Counsel for the applicant-appellant submitted before the High Court that he does not press the applications. The applications, thus, were dismissed as withdrawn.

4. In view of Order passed in Application No.20593 of 2014 learned counsel for applicant- appellant did not press other criminal miscellaneous applications which were also dismissed as withdrawn by Order dated 30.01.2015.

5. These appeals have been filed by appellant against the order dated 30.01.2015 of the High Court by which order the applications filed by the applicant-appellant were dismissed as withdrawn.

6. Shri Neeraj Jain, learned senior Advocate appearing for the appellant submits that appellant has right to raise the issue of juvenility at

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- A any stage, hence, even if his applications for submitting additional evidence in support of his case of juvenility, has been dismissed as withdrawn, he still can raise the issue in this Court in the present appeal. He further submits that the certificate filed from Sant Kabir School, Hisar was a relevant certificate which ought to have been relied by
- B District Judge in his report. He submits that learned Sessions Judge erred in relying on birth certificate in which son has been born to Davender on 17.08.1981 has been recorded.

7. Learned Counsel for the appellant has placed reliance on Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007.

- C He submits that Rule 12 deals with the procedure to be followed in determination of age. He submits that by virtue of Rule 12(3) the date of birth certificate from the school first attended was to be preferred than the birth certificate given by Corporation or Municipal Authority, or a Panchayat. He submits that school certificate relied by appellant was to be preferred by statutory provisions, hence, the report of District Judge
- D relying on birth certificate given by Corporation was erroneous. In support of his submission he has placed reliance on judgment of this Court in **2011(13) SCC 751, Shah Nawaz versus State of Uttar Pradesh and another**, and Judgment of this Court in **2012(10) SCC 489, Abuzar Hossain alias Gulam Hossain versus State of West Bengal**.

- E 8. Learned counsel appearing for the State has refuted the submission of the appellant and submits that District & Sessions Judge has after due inquiry held that appellant was not Juvenile on the date of occurrence. He submits that no error has been committed by District & Sessions Judge on relying on the birth certificate issued by Registrar (Birth & Death). He submits that the certificates which were sought to be submitted in the additional evidence were not pressed before the High Court. The appellant himself having withdrawn his applications for filing additional evidence has virtually accepted the report of District and Sessions Judge and cannot be allowed to challenge the same in this Court.

9. We have considered the submissions of learned counsel to the parties and perused the record.

10. Even though applicant-appellant has withdrawn his application filed in the High Court for placing certain additional evidence

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to question the report submitted by District and Sessions Judge, we proceed to examine the submissions raised by learned counsel for the appellant on merits. The main thrust of the submission of learned counsel of the appellant is based on Rule 12 of 2007 Rules. Rule 12(3) on which reliance is placed is as follows:-

"12. Procedure to be followed in determination of age. - B

(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; C

(ii) the date of birth certificate from the school (other than a playschool) first attended; and in the absence whereof;

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

(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." E

11. This Court in *Shah Nawaz case* had considered Rule 12 of 2007 Rules and has held that preference has been given to the school certificate over the medical report. In paragraph 26, following has been laid down:-

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A “26. We are also satisfied that Rule 12 which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report.”

B 12. A Three-Judge Bench in *Abuzar Hossain(Supra)* while considering Rule 12 laid down following:-

“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 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.

C 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, marksheets 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 appellant.”

D 13. In his concurring opinion Justice T.S. Thakur while elaborating Rule 12 laid down following:-

E F G “43.2. The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence showing his date of birth by reference to any public document like the Register of Births and Deaths

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maintained by the municipal authorities, panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the court. Again, there may be cases in which the accused may not be in a position to provide a birth certificate from the corporation, the municipality or the panchayat, for we know that the registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful. A

44. Rule 12(3) of the Rules makes only three certificates relevant. These are enumerated in sub-rules 3(a)(i) to (iii) of the Rule which reads asunder:- C

"(3)(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;"Non-production of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for sub-rule(3)(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the "absence" of the certificates." E

14. The submission of learned counsel for the appellant was that school certificate filed by him with date of birth 17.08.1982 was not even challenged, hence, on the strength of Rule 12 the said certificate ought to have been accepted by the learned Sessions Judge. F

15. The submissions raised by learned counsel for appellant based on Rule 12(3) of 2007 Rules could have been considered by us in detail but we notice that in the present case, there is no applicability of Rule 12 of 2007 Rules. The date of occurrence in the present case is 23/24.05.2000 on which date Rule 2007 were not enforced. Even on the date when learned District and Sessions Judge submitted his report 08.05.2003 after holding inquiry, Rule 2007 was not in force. Rule 100 of 2007 Rules repealed the earlier Rule of Juvenile Justice (Care and

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- A Protection of Children) Rules, 2001. Rule 100 of 2007 Rules is as follows:-

“100. Repeal. - The Juvenile Justice (Care and Protection of Children) Rules, 2001, notified vide F.No.1-3/2001-SD, dated the 22nd June, 2001 in the Gazette of India, Extraordinary, Part I, Section 1 of the same date is hereby repealed.”

- B 16. Thus, the relevant Rule occupying the field in the present case were 2001 Rules. Rule 22 of 2001 Rules dealt with “procedure to be followed by a board in the holding inquiry in the determination of age.” Rule 22 sub-sub-Rule (5) which is relevant for the present case is as follows:-

“22(5). In every case concerning a juvenile or a child, the Board shall either obtain, -

- D ***(i) a birth certificate given by a corporation or a municipal authority;***
- (ii) a date of birth certificate from the school first attended; or***
- (iii) matriculation or equivalent certificates, if available; and***
- E ***(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board***
- F ***regarding his age; and, when 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.”***

- G 17. We are of the view that the relevant Rules which were required to be looked into are the Juvenile Justice (Care and Protection of Children) Rules, 2001.

- H 18. The High Court had no occasion to consider the issue since the appellant has not pressed the issue before the High Court, we are of the view that it shall be appropriate that the High Court be requested to consider the question of juvenility of the appellant afresh before proceeding to decide the appeal.

19. The interest of justice be served by setting aside the order dated 30.01.2015 passed by the Punjab and Haryana High Court and remit the question of juvenility to the High Court for consideration. The High Court before deciding the appeal on merit may consider the question of juvenility on the basis of the relevant materials on record. The documents which were sought to be submitted before the High Court by the appellant be also taken on record and the High Court may reconsider the issue on the basis of materials on record as well as the report of the Sessions Judge which was sought by the High Court. The order dated 30.01.2015 passed by the High Court is set aside. The appeals are disposed of accordingly.

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Nidhi Jain

Appeals disposed of.