

Rishipal Singh Solanki vs The State Of Uttar Pradesh on 18 November, 2021

Author: B.V. Nagarathna

Bench: B.V. Nagarathna, Dhananjaya Y Chandrachud

1

RE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1240 OF 2021
(ARISING OUT OF SLP(CRL.) NO.6223 OF 2021)

RISHIPAL SINGH SOLANKI

..... APPELLANT

VS.

STATE OF UTTAR PRADESH & ORS.

.... RESPONDENT

J U D G M E N T

NAGARATHNA J.

The appellant has preferred this appeal against the impugned order dated 12.03.2021 passed by the High Court of Judicature at Allahabad in Criminal Revision No.430 of 2021 whereby the High Court rejected the aforesaid criminal revision filed against the judgment and order dated 04.01.2021 passed by the Additional District and Sessions Judge, Special Judge POCSO Act (Exclusive Court), Baghpat, Uttar Pradesh, dismissing the Criminal Appeal No.27 of 2020. The said criminal appeal was filed against the order dated 11.11.2020 passed by the Principal Magistrate, Juvenile Justice Board, Baghpat allowing the Miscellaneous Case No.16 of 2020 arising out of Case Crime No.116 of 2020 under sections 147, 148, 149, 323, 307, 302 and 34 of the Indian Penal Code (for short, the 'IPC'), Police Station at Singhawali Ahir, District Baghpat, Uttar Pradesh, and declaring the accused – Nishant Solanki @ Nishu (respondent no.2 herein) as a juvenile delinquent.

2. Succinctly stated, the facts are that, in an incident that occurred on 05.05.2020 at around 4:00 pm, inter alia, respondent no.2 – Nishant Solanki @ Nishu (hereinafter referred to as 'Nishant') along with other accused are alleged to have attacked upon the appellant and his family causing serious injuries as well as death of appellant's father Bhopal Singh, who was declared 'brought dead'

by the doctor on the same day i.e. 05.05.2020 and his uncle Kaluram, who died on 09.05.2020 due to grievous injuries sustained by him in the aforesaid incident.

3. Nishant, through his mother/natural guardian-respondent no.3 herein, filed an application being Miscellaneous Case No.16/2020 before the Juvenile Justice Board (hereinafter referred to as the 'JJ Board'), Baghpat, praying therein that the respondent no.2/accused viz., Nishant, be declared as a juvenile delinquent. Evidence was let in on the said application through respondent no.3 who is the mother and natural guardian of Nishant. On coming to know about the same, the appellant herein entered appearance in the said proceeding through his counsel and filed an application dated 20.07.2020 under Section 311 of the Code of Criminal Procedure (for short, the 'Cr.P.C.') seeking permission of the JJ Board to cross-examine respondent no.3. The appellant herein was permitted to do so on 22.07.2020, on which date the application was posted for further cross-examination of the mother of Nishant. On the said date, respondent no.3 was further cross-examined by the appellant.

4. Another witness, Manoj Kumar, Principal, Sardar Vallabhbhai Patel Higher Secondary School, Shajarpur, Kaidna, District Baghpat, was also examined as DW-2 on 10.08.2020 and subsequently, Surendra Kumar Saini, Principal, Sarvodaya Public School, Khindora, District Baghpat, was examined as DW-3.

5. The police also filed a charge-sheet under Sections 147, 148, 149, 323, 307, 302 and 34 of the IPC against all the accused including respondent no.2 – Nishant on 22.07.2020.

6. In the said proceedings, an application was filed on 09.09.2020 before the JJ Board for medical test of respondent no.2 Nishant to ascertain his actual and true age. By order dated 14.09.2020, the said application was dismissed and the matter was ordered to be posted on 23.09.2020 for hearing on the issue of determination of age of the respondent no.2 – Nishant.

7. Being aggrieved by the rejection of the application dated 09.09.2020 seeking medical test of respondent no.2 - Nishant, the appellant herein filed a criminal revision before the District and Sessions Judge, Baghpat and an application being Transfer Application (Criminal) No.158/2020 before the High Court praying, inter alia, for the transfer of proceedings in Miscellaneous Case No.16/2020 pending before the JJ Board, Baghpat, to some other JJ Board of the State.

8. During the pendency of the aforesaid proceedings before the High Court, the JJ Board, Baghpat vide order dated 11.11.2020 allowed the application being Misc. Case No.16/2020 filed by respondent no.3 mother of Nishant and declared Nishant as a juvenile delinquent. Assailing the said order, the appellant filed an appeal being Criminal Appeal No.27 of 2020 under section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'JJ Act, 2015') before the District and Sessions Judge, Baghpat. The said Court dismissed the said appeal by its judgment dated 04.01.2021 against which the appellant filed a Criminal Revision No.430 of 2021 before the High Court. The said criminal revision was also rejected by the High Court vide impugned order dated 12.03.2021. Being aggrieved of the same, the appellant has filed the present appeal by special leave before this Court.

9. We have heard Mr. Anupam Dwivedi, learned counsel for the appellant, Mr. Sharan Thakur, learned Additional Advocate General for the respondent – State of Uttar Pradesh, and Mr. Saurabh Trivedi, learned counsel for respondent nos.2 and 3 and perused the record.

10. Mr. Dwivedi, learned counsel for the appellant contended that respondent no.2 has been accused of committing grave offences under sections 147, 148, 149, 323, 307, 302 and 34 of the IPC along with other co-accused, but respondent no.2 has filed an application claiming juvenility and the same has been allowed erroneously by the JJ Board at Baghpat which order has been sustained by the appellate court as well as the High Court. It was contended that there are contradictions in the evidence of the witnesses examined on behalf of the accused- respondent no.2, particularly, his mother with regard to his date of birth which is stated to be 25.09.2004 but the same has not been established in accordance with law. The School Admission Form (Annexure P-11) was produced as Ex.A-8 to show that the same was signed by respondent no.2 Nishant when he was purportedly four years of age. Ex.A-9 (Annexure P-12) is stated to be a document signed by respondent no.2 Nishant when he was twelve years of age. He submitted that the signatures on both these documents are identical. Hence, the genuineness of the said documents is in grave doubt and the same could not have been relied upon in support of the claim of juvenility made by respondent no.2 herein.

11. In Ex.A-8, our attention was drawn to Column No.15 requiring the Aadhaar number of the student to be filled, to contend that the said form is said to have been submitted on 02.07.2009 seeking admission of respondent no.2. That in July 2001 the requirement of furnishing UID/Aadhaar number could not arise at all as it was issued for the first time to a resident of Nandurbar, Maharashtra only on 29.09.2010. It was urged that Ex.A-8 (Annexure P-11) is a got up document in order to misrepresent the age of respondent no.2 and thereby claim the benefit of juvenility. It was further contended that if in the year 2009, respondent no.2 sought admission to the Class 1 when he was less than five years of age, then, after a period of five years only, he could not have sought admission to Class 8. There is no explanation as to how he could have sought admission to Class 8 only after five years of seeking admission to Class 1. It was also submitted that DW-3, Principal of the primary school during his cross-examination admitted that the signature of Nishant on the admission forms of class 1 and class 8 are identical. Hence it was contended that it is doubtful as to how an infant, who was aged about four years, (if really the date of birth of respondent no.2 was 25.09.2004,) could have signed his name on the school admission form when he sought admission to class 1. It was contended that such a signature is forged as no child who is four years of age would have been able to sign his name on the school admission form and secondly, could not have also sought admission to class 1 at that age.

12. It was contended that the JJ Board has not appreciated the legislative intent behind section 94 of the JJ Act, 2015 by declaring that matriculation certificate is a conclusive document for determining the age of the juvenile irrespective of other material discrepancies in the oral testimony of the witnesses or other documents being produced. In support of the said submissions, reliance was placed on *Parag Bhati vs. State of Uttar Pradesh* – (2016) 12 SCC 744; *Sanjeev Kumar Gupta vs. State of Uttar Pradesh & Anr.* – (2019) 12 SCC 370; and *Abuzar Hossain vs. State of West Bengal* – (2012) 10 SCC 489.

13. It was further contended that in the aforesaid cases, the claim of juvenility of the accused was rejected due to discrepancies in the evidence, notwithstanding the fact that as per the matriculation certificate issued to the accused therein, they were juveniles. In other words, it was contended that the age shown in the matriculation certificate cannot be accepted on its face value if there is other evidence which contradicts the same. It was hence contended that the impugned order of the High Court, judgment of the appellate court and order passed by the JJ Board, Baghpat, may be set aside and the application filed on behalf of the respondent no.2-Nishant may be dismissed.

14. Mr. Sharan Thakur, learned additional Advocate General for the State of Uttar Pradesh, supported the contentions of learned counsel for the appellant and submitted that the matriculation certificate relied upon by respondent no.2 cannot be accepted as the accompanying document, though the age of Nishant indicated in the matriculation certificate coincides with the age indicated in Ex-A8 and A9. It was contended that these documents cannot be accepted on their face value as the said exhibits could not have borne the signature of Nishant. They are also not in consonance with the age at which Nishant would have been admitted to school and completed his matriculation. Therefore, it was contended that the orders impugned namely, the order of the High Court as well as the orders of the learned District Judge and the JJ Board may be set aside.

15. Mr. Saurabh Trivedi, learned counsel for respondent nos.2 and 3, contended that Nishant was born on 25.09.2004 and on the date of the incident i.e.05.05.2020, he was a minor being only 15 years and 8 months of age. That initially, he studied in a private school in the village and was admitted to class 1 in 2009; he passed classes 6, 7, and 8 from Sarvodaya Public Junior High School, Village Khindoda, District Baghpat and got a school transfer certificate on 31.03.2017 wherein his date of birth was shown as 25.09.2004; that Nishant joined Sardar Vallabh Bhai Patel Higher Secondary School, Khanjarpur Khaidar, District Baghpat, on 04.07.2017 and completed his High School and cleared the Board examination with 85% marks. The U.P. State Board of Secondary Education issued a High School Certificate on completion of Board Examination for Class 10 showing his date of birth as 25.09.2004. Therefore, on the date of the incident i.e.05.05.2020, respondent no.2 was a juvenile and hence the JJ Board as well the High Court have rightly appreciated the case of respondent no.2-Nishant and allowed his application claiming juvenility. It was contended that the matriculation certificate or the certificate issued by the Board conducting the said examination (Annexure P-15) is sufficient proof of the age of the juvenile as per the requirements of JJ Act, 2015. Reliance was placed on *Ashwani Kumar Saxena vs. State of M.P.* – (2012) 9 SCC 750, to contend that the matriculation certificate is a document on which full reliance could be placed for determination of the age of the juvenile accused. Hence, there is no merit in this appeal.

16. It was further submitted that the appellant cannot seek ossification test of respondent no.2 for the purpose of determination of his age as the same is not conclusive for the purpose of determination of the age vide *Bablu Pasi vs. State of Jharkhand* – (2008) 13 SCC 133 and *State of M.P. vs. Anoop Singh* – (2015) 7 SCC 773.

17. It was urged that the appellant has not been successful in negating the case of respondent no.2 Nishant, who, being a juvenile on the date of the incident is entitled to all protection under the

provisions of the JJ Act, 2015. It was submitted that there is no merit in the appeal and the same may be dismissed.

18. The JJ Act, 2015 is a sequel to the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'JJ Act, 2000') which has since been repealed. Under the JJ Act, 2000, an amendment was made by Act 33 of 2006 with effect from 22.8.2006 under which section 7A of was inserted which reads as under:

“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 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect.” Section 49 of the said Act reads as under:

“49. Presumption and determination of age.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.”

19. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 'JJ Rules, 2007') prescribed the procedures for determination of age. Rule 12 reads as under – “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 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 sub-rule (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 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.”

20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining : (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. Only in the absence of either (i),

(ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year. If a juvenile in conflict with law was found to be below 18 years, an order had to be passed declaring the status of the juvenility by the Court. The said procedure was also applicable to dispose off cases where the status of the juvenility had not been determined in accordance with the Act and the Rules made thereunder.

21. On repeal of JJ Act, 2000 and on the enforcement of JJ Act, 2015, the procedure to be followed when a claim of juvenility is raised before any court, other than a Board is stipulated under section 9(2)&(3). The same reads as under – “2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.” There is no corresponding Rule to determine juvenility akin to Rule 12 of the JJ Rules, 2007.

22. On the other hand, under section 94 of the JJ Act, 2015, a presumption is raised that when a person is brought before the JJ Board or the Child Welfare Committee (‘Committee’ for short)

(other than for the purpose of giving evidence) and the said person is a child, the JJ Board or the Committee shall record such observation stating the age of the child as nearly as may be, and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age. But where the said Board or the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. For immediate reference section 94 of JJ Act, 2015 is extracted as under:

“94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

a) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

b) the birth certificate given by a corporation or a municipal authority or a panchayat;

c) and only in the absence of (i) and

(ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

23. Under section 7A of JJ Act, 2000 which was inserted by an amendment with effect from 22.08.2006, provision was made to claim juvenility by contending that the accused person was a juvenile on the date of commission of the offence and in such a case, on the evidence taken on record, a finding regarding the age of such person had to be recorded by the court, other than a JJ Board. The claim for juvenility could be raised before any Court and at any stage, even after the final disposal of a case and such claim had to be determined in terms of the said Act and the rules made thereunder. If the Court found a person to be a juvenile on the date of commission of offence under sub-section (1) of section 7A of the JJ Act, 2000, it had to forward the juvenile to the JJ Board for passing appropriate orders and the sentence, if any, passed by a Court would not have any effect. However, under the JJ Act, 2015, a provision corresponding to section 7A of the JJ Act, 2000, is in the form of sub-section 2 of section 9 of the said Act, which has been extracted above.

24. Further, unlike section 49 of JJ Act, 2000, section 94 of JJ Act, 2015 provides for presumption and determination of age if the Juvenile Justice Board or the Committee has reasonable grounds to doubt whether the person brought before it is a child or not. It shall undertake the process of determination of age by seeking evidence such as:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat; and

(iii) only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

25. The difference in the procedure under the two enactments could be discerned as under:

(i) As per JJ Act, 2015 in the absence of requisite documents as mentioned in Sub-section (2) of Section 94(a) and (b), there is provision for determination of the age by an ossification test or any other medical age related test to be conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act;

whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

(ii) With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under sub- section 2 of section 94 of the JJ Act, 2015 as a substantive provision.

(iii) Under Section 49 of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person.

26. But, under Section 94 of the JJ Act, 2015, which also deals with presumption and determination of age, the Committee or the JJ Board has to record such observation stating the age of the child as nearly as may be and proceed with the inquiry without waiting for further confirmation of the age. It is only when the Committee or the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, it can undertake the process of age determination, by seeking evidence.

27. Sub-section (3) of Section 94 states that the age recorded by the Committee or the JJ Board to be the age of the persons so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. Thus, there is a finality attached to the determination of the age recorded and it is only in a case where reasonable grounds exist for doubt as to whether the person brought before the Committee or the Board is a child or not, that a process of age determination by seeking evidence has to be undertaken.

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

(a) In the case of *Ashwani Kumar Saxena v. State of Madhya Pradesh* - (2012) 9 SCC 750, this Court opined that under Section 7A of JJ Act, 2000 obligated the Court to make an inquiry and not an investigation or trial under the Code of Criminal Procedure. The Court stated its opinion in the following words :

“34.....There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept

during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”

(b) Reference could also be made to another decision of this Court in the case of Abuzar Hossain alias Gulam Hossain v. State of West Bengal - (2012) 10 SCC 489, wherein it has been summarized as under:

"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial Court and can be raised for the first time before this Court though not pressed before the trial Court and in the appeal Court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the Court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the Court and/or be sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the Court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded 22-10-2021 (Page 6 of 12) 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 - (2009) 7 SCC 415 and Pawan - (2009) 15 SCC 259, these documents were not found prima facie credible while in Jitendra Singh - (2010) 13 SCC 523 the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age.

If such documents, prima facie, inspire confidence of the Court, the Court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to

determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the Court to order an enquiry into determination of the age of the delinquent.

39.5. The Court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hyper technical approach and the persons who are entitled to get benefits of the 2000 Act shall get such benefits. The Courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability. 39.6.

Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the Court at the threshold whenever raised."

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

(d) In *Jitendra Ram v. State of Jharkhand* -

(2006) 9 SCC 428, this Court has sounded a note of caution on the earlier observations made by it in the case of *Bhola Bhagat & others v. State of Bihar* - (1997) 8 SCC 720, wherein it was observed that an obligation has been cast on the Court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. This Court referring to its decision in *Bhola Bhagat* (supra) observed as follows :

"20. ...We are, however, of the opinion that the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records." The aforesaid observations were made in the context of what had been stated in *Bhola Bhagat vs. State of Bihar* – (1997) 8 SCC 720 which is extracted as under:

"18. Before parting with this judgment, we would like to reemphasise that when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case

it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions of an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other.”

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

(f) In *Babloo Pasi Vs. State of Jharkhand and another* - (2008) 13 SCC 133, this Court while dealing with the provisions of JJ Act, 2000, observed as under:

“22. it is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.

23. It is true that in *Arnit Das v.*

State of Bihar this Court has, on a review of judicial opinion, observed that while dealing with a question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hyper-

technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. We are also not oblivious of the fact that being a welfare legislation, the courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences.”

(g) In *State of Madhya Pradesh v. Anoop Singh* - (2015) 7 SCC 733, it was observed that the ossification test is not the sole criterion for determination of date of birth, when birth certificate and middle school certificate are available. It was observed that the High court was not right in presuming that the prosecutrix, therein, was more than 18 years of age at the time of the incident. There was a difference of two days in the date of birth mentioned in the birth certificate and the middle school certificate but the same was held to be a minor discrepancy. In that case, it was held that prosecutrix was below 16 years of age at the date of the incident and set aside the judgment passed by the High Court.

(h) *Sanjeev Kumar Gupta vs. State of Uttar Pradesh and another* - (2019) 12 SCC 370, is a judgment authored by one of us (Hon'ble Dr. D.Y. Chandrachud, J.), wherein the credibility and authenticity of the matriculation certificate for the purpose of determination of the age under Section-7A of the JJ Act, 2000, came up for consideration. In the said case, the JJ Board had rejected the claim of juvenility and this Court confirmed the decision of the JJ Board rejecting the claim of juvenility by setting aside the judgment of the High Court. In the said case, it was observed that the records maintained by the CBSE were purely on the basis of the final list of the students forwarded by the Senior Secondary School where the second respondent therein had studied from class 5 to 10, and not on the basis of any other underlying document. On the other hand, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of another school which the second respondent therein had attended till class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both, Aadhaar Card and driving license. It was observed that the date of birth reflected in the matriculation certificate could not be accepted as authentic or credible. In the said case, it was held that the date of birth of the second respondent therein was 17.12.1995 and that he was not entitled to claim juvenility as the date of the alleged incident was 18.08.2015.

In the said case, the judgment of this Court in *Ashwani Kumar Saxena* (supra) and *Abuzar Hossain* (supra) were considered and it was noted that the decision in *Abuzar Hossain* was rendered three days after the decision in *Ashwani Kumar Saxena*, and in *Abuzar Hossain*, which was a three- Judge Bench decision, it was observed that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard.

It was observed in *Abuzar Hossain* (supra) by Hon'ble T.S. Thakur J., as then the learned Chief Justice was, that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former, the Court simply records a prima facie conclusion, while a declaration is made on the basis of evidence. Hence, the approach at the stage of directing an inquiry has to be more liberal lest, there is miscarriage of justice. The standard of proof required is different for both. In the former, the Court simply records the prima facie conclusion. It would eventually depend on how the Court evaluates such material for a prima facie conclusion and the Court may or may not direct an inquiry. In the latter, the Court makes a declaration on evidence that it scrutinises and accepts such evidence only if it is worthy of acceptance. His Lordship further observed as under:

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

(i) In case of Parag Bhati (Juvenile through Legal Guardian-Mother-Smt. Rajini Bhati v.

State of Uttar Pradesh and another – (2016) 12 SCC 744, both the aforesaid judgments were considered and this Court observed as under:

"34.It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the Courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

35. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law cannot be allowed to come to his rescue. (Emphasis added) From the above decision, it is clear that the purpose of Juvenile Justice Act, 2000 is not to give shelter to the accused of grave and heinous offences.

36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain, an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

(j) In the judgment rendered by Hon'ble Hemant Gupta, J., in Ram Vijay Singh vs. State of Uttar Pradesh – 2021 CriLJ 2805, it was observed that the ossification test is not the sole criterion of age determination and a blind and mechanical view regarding the age of the person cannot be adopted solely on the basis of medical opinion by radiological examination. Though, radiological examination is a useful guiding factor for determining the age of a person, the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error. Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other circumstances. The relevant paragraphs of the said judgment are extracted as under:

“14. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person There are minor variations as the Rule 12(3)(a)(i) and

(ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of Section 94 of the Act.

The reliability of the ossification test remains vulnerable as was Under Rule 12 of the Rules.

15. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. This Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. (2020) 7 SCC 1 held, in the context of certificate required under Section 65B of the Evidence Act, 1872, that as per the Latin maxim, *lex non cogit ad impossibilia*, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.”

29. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i),

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

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when

there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-

technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

30. Bearing in mind the aforesaid position of law, the same could be applied to the facts of the present case. It is noted that in the FIR dated 05.05.2020, the name of respondent no.2 has been written as Nishu and it has been stated that Nishu S/o Bhushan and other accused were carrying a Farsa (battle-axe), lathi and balkaties (cane- knives) and attacked the complainant/ appellant herein and the members of his family (Annexure P-

1).

31. An application being Misc. Case No.16/2020 filed on behalf of respondent no.2 Nishant before the JJ Board, Baghpat, was for a declaration that respondent no.2 was a juvenile delinquent and that he was approximately 15 years 8 months of age on the date of commission of the alleged offences i.e. 05.05.2020. No such application was filed before the competent Sessions Court.

32. Be that as it may. In support of the aforesaid application, Certificate-cum-Marks Sheet of the High School issued by the Board of High School and Intermediate Examination U.P., was produced stating that the date of birth of respondent no.2 Nishant was 25.09.2004 and that he had passed the High School Examination held in February, 2019. The said certificate is dated 27.04.2019.

33. It was stated by the mother of respondent no.2 that birth certificate of respondent no.2 was not sought after his birth; that when the father of respondent no.2 sought admission in class 1 in Sarvoday Public School, Khindora, District Baghpat, no document in respect of birth was given at the time of admission in the school. The date of birth was mentioned orally. That respondent no.2 Nishant studied in Sarvoday Public School upto Class 8 and thereafter, he was admitted in another school viz., Sardar Vallabhbhai Patel Higher Secondary School, Shajarpur, Kaidna, District Baghpat for class 9. The mother of respondent no.2 in her cross examination has reiterated that the date of birth of respondent no.2 was orally mentioned at the time of admission of respondent no.2-Nishant in class 1 at Sarvoday Public School and no document in support thereof was submitted in the school.

34. DW-2 Manoj Kumar, Principal, Sardar Vallabhbhai Patel Higher Secondary School, Shajarpur, Kaidna, District Baghpat, stated in his deposition that respondent no.2 Nishant was admitted to class 9 on 04.07.2017 and a transfer certificate recording the date of birth of respondent no.2 as 25.09.2004 was submitted and the same was entered in the school records. All the admission forms had to be signed by the students and the guardians but the transfer certificate from the previous school was not verified.

35. Annexure P-11 is a copy of the Admission Application Form of Sarvoday Public School, Khindora, Baghpat, which is in Hindi, wherein respondent no.2 has signed. Annexure P-12 is a copy of the application form dated 03.04.2014 seeking admission to class 8. It is contended by learned counsel for respondents that on a comparison of the signatures of respondent no.2 on Annexure P-11 and Annexure P-12, it is noted that the signature on Annexure P-11 was made in the year 2009, whereas, the signature on Annexure P-12 was made in the year 2014 and they are similar. Further, it is not possible for a child seeking admission to class 1 to sign his name on the admission form.

36. DW-3 Surendra Kumar Saini, Principal, Sarvoday Public School, Khindora, Baghpat, has stated that respondent no.2 Nishant was a little above four years of age at the time of admission in class 1; that no photograph of Nishant was affixed on the admission form nor was any document of the previous school of Nishant submitted; that Nishant studied in Sarvoday Public School from class 1 to class 8 and after passing class 5, admission form for class 6 had to be filled but the same was not available in the file. He further stated that the admission form dated 03.04.2014 which was duly signed by Nishant and his father was available on record and pertained to class 8. He also admitted that the signature of Nishant on admission forms of class 1 and class 8 are identical but the said

admission forms are not fabricated.

37. The JJ Board, Baghpat, by its order dated 14.09.2020 dismissed the application seeking medical examination of respondent no.2-Nishant herein and there is nothing produced to show that the same has been set aside. According to the JJ Board, the matriculation certificate issued by the concerned Board indicated the date of birth as 25.09.2004 and it is only in the absence of such a document that determination of age had to be by ossification test or any other latest medical age determination test. In the instant case, since the certificate of the matriculation Board was available, it was unnecessary for orders for medical test of Nishant.

38. Subsequently, the JJ Board by its order dated 11.11.2020 allowed the application of respondent no.1 being Misc. Case No.16/2020 filed on behalf of respondent no.2-Nishant. The JJ board observed that letter dated 22.07.2020 issued by the Office of the Administrative Officer, Regional Office, Intermediate Education Council, Meerut, UP, revealed that the date of birth of accused Nishant had rightly been recorded as 25.09.2004 in the High School mark-sheet. The date of the incident was 05.05.2020. Hence respondent no.2 Nishant was 15 years and 8 months of age as on the date of the incident.

39. By order dated 11.11.2020, the JJ Board declared respondent no.2 Nishant as a juvenile delinquent in Case Crime No.116 of 2020 for offences under sections 147, 148, 149, 323, 307, 302 and 34 of the IPC P.S. Singhawali Ahir, District Baghpat.

40. The aforesaid order has been sustained by the District and Sessions Court as well as the High Court by holding that section 94 of the JJ Act, 2015 had been complied with in the instant case inasmuch as the matriculation or equivalent certificate from the concerned Examination Board had indicated the date of birth of respondent no.2 Nishant to be 25.09.2004. Therefore, Sub-section 2 of Section 94 of the JJ Act, 2015 applies as there were no reasonable ground to doubt the said document. In the absence of there being any evidence to negate the same, the criminal revision was dismissed. This is on the strength of Sub- section (3) of Section 94 of the JJ Act, 2015 which is a deeming provision.

41. Though Mr. Dwivedi, learned counsel for the appellant, emphasized that the signatures of respondent no.2-Nishant on the admission forms of class 1 and class 8 are identical and it could not be so on the admission form of class 1 as Nishant was only four and half years old when he was admitted to class 1. But the fact remains that in 2019, when Nishant completed his class 10, his date of birth has been shown as 25.09.2004 in the matriculation certificate. Hence, respondent no.2 was only about 15 years of age on the date of incident, and in any case he was less than 16 years of age.

42. In the absence of there being any rebuttal evidence brought on record by the appellant herein, even if the documents seeking admission to class 1 and class 8 are discredited or eschewed, the fact remains that the mark-sheet pertaining to the matriculation of Nishant, issued by the concerned Board, gives rise to a presumption that Nishant was less than 16 years of age on the date of incident i.e.05.05.2020. Moreover, the letter dated 22.07.2020 of the Administrative Officer, Regional Office, Intermediate Education Council, UP, reveals his age as 25.09.2004.

43. There are two considerations which would distinguish the judgment in Sanjeev Kumar Gupta. Firstly, in Sanjeev Kumar Gupta, this Court held that, though, there was no underlying document corroborating the CBSE record maintained on the basis of final list of the document forwarded by the secondary school, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of the school which the second respondent therein had attended till class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both Aadhaar Card and Driving Licence.

44. In the instant case, Ex- P-11 and 12 have been relied upon to prove that the date of birth of respondent no. 2 mentioned in the said documents are in consonance with the date of birth indicated in the matriculation certificate. Although, learned counsel for the respondents contended that Ex- P-11 and 12 cannot be relied upon, the fact remains that a photocopy of the High School marksheet of accused Nishant with Gazette year 2019, Roll No.0485064 year 2019, in respect of which a letter of verification being No.R.O.I.E.C./records/4016 dated 22.07.2020, received from the Office of the Administrative Officer, Regional Office, Intermediate Education Council, Uttar Pradesh (Meerut) also authenticated the date of birth of accused Nishant as 25.09.2004. Moreover, the said matriculation certificate has been issued by the concerned Board. Further, the date of birth as recorded in the school admission records, as well as the matriculation certificate are the same namely, 25.09.2004. The incident occurred on 05.05.2020. Thus respondent no.2 was only 15 years 7 months of age on the date of the incident which in any case is less than 16 years of age.

45. Secondly, in Sanjeev Kumar Gupta, the High Court had reversed the findings of the Sessions Judge on the basis of the matriculation certificate by holding the said certificate would have precedence over any other document. The same was reversed by this Court as the Aadhaar Card, Voter's ID and Eighth standard marksheet indicated the date of birth of the second respondent therein as 27.12.1995 whereas, matriculation certificate indicated the date of birth as 17.12.1998. And, according to the medical report, it was opined that the second respondent was nineteen years of age on 09.11.2016, when the alleged offences were said to have committed by him in the said case.

46. But in the instant case, admittedly, there is no other document indicating the date of birth of the second respondent contrary to what has been indicated in the matriculation certificate. Thus, such a discrepancy in the date of birth does not arise herein. No contra evidence to the documents produced by the second respondent have been produced by the appellant herein. In the circumstances, we are not inclined to differ from the order of the High court which sustained the judgment of the District & Sessions Court as well as of the JJ Board in this case.

47. Section 94 of the JJ Act, 2015 raises a presumption regarding juvenility of the age of the child brought before the JJ board or the Committee. But in case the Board or Committee has reasonable grounds for doubt about the person brought before it is a child or not, it can undertake the process of determination of age by seeking evidence. Thus, in the initial stage a presumption that the child brought before the Committee or the JJ Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not. In such a case, it can undertake the process of age

determination by the evidence which can be in the form of:

- (i) Date of birth certificate from the school or the matriculation certificate from the concerned board, if available or in the absence thereof;
- (ii) The birth certificate given by a corporation or by a municipal authority or a panchayat and in the absence of the above;
- (iii) Age has to be determined by an ossification test or any other medical age determination test conducted on the orders of the committee or the board.

48. The age recorded by the Committee or the Board to be the age of the person so brought before it shall for the purpose of the JJ Act, 2015 be deemed to be the true age of the person. The deeming provision in sub-section (3) of section 94 of the JJ Act, 2015 is also significant inasmuch as the controversy or the doubt regarding the age of the child brought before the Committee or the JJ Board is sought to be set at rest at the level of the JJ Board or the Committee itself.

49. In the circumstances, we find no merit in the instant appeal and the same is dismissed.

50. Pending interlocutory applications, if any, stand disposed.

.....J [DR DHANANJAYA Y CHANDRACHUD]
.....J [B.V. NAGARATHNA] NEW DELHI;

NOVEMBER 18, 2021.