Mukarrab Etc vs State Of U.P on 30 November, 2016

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Bench: A.K. Sikri, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1119-1120 OF 2016

[Arising out of SLP (Crl.) Nos. 6754-55 of 2014]

MUKARRAB ETC. APPELLANTS

Versus

STATE OF U.P. RESPONDENT

J U D G M E N T

R. BANUMATHI, J.

The present appeals by special leave impugn the judgment dated 27.05.2014 passed by the High Court of Judicature at Allahabad, whereby the appeal filed by the appellants herein was dismissed affirming their conviction under Section 302 IPC read with Section 149 and Section 148 IPC and also sentence of imprisonment for life under Section 302 IPC and rigorous imprisonment for two years under Section 148 IPC.

2. Totally six accused including the appellants herein were convicted. The Special Leave Petitions preferred by the other accused namely Babban, Moazzam, Jahangir and Jamil were dismissed by this Court at the admission stage itself on 12.09.2014. Since the appellants Mukarrab and Arshad had raised the claim of juvenility before this Court, notice was issued qua these accused to examine their claim that they are juveniles in conflict with law under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. Case of the prosecution is that on 22.03.1994, present appellants, Mukarrab and Arshad alongwith four others viz. Babban, Moazzam, Jahangir and Jamil had a quarrel with the deceased, Azamul Haq while he was coming back to his house from the market at around 5.30 p.m., the accused persons abused the deceased on the pretext that he was causing obstruction in Mangal Bazaar. Deceased tried to escape from the clutches of the appellants and other accused; but he was caught and attacked by tamanchas/guns and knives and killed. The occurrence was witnessed by five eye witnesses who were coming behind the deceased.

4. The accused Moazzam, Jahangir, Jamil, Mukarrab (appellant), Babban and Arshad (appellant), were charge-sheeted under Sections 147, 148, 149, 302 IPC and the case was committed to the Court of Session. Trial was conducted and a number of witnesses were examined on behalf of the prosecution as well as the defence. Vide judgment and order dated 16.09.1995 passed by the VIIIth Additional District and Sessions Judge, Moradabad in Session Trial No. 484 of 1994, all the accused were convicted under Section 302 IPC read with Section 149 IPC and Section 148 IPC and sentence of imprisonment for life under Section 302 IPC and rigorous imprisonment for two years under Section 148 IPC was imposed. All the sentences were to run concurrently. The accused challenged their conviction and sentence imposed on them by filing three separate appeals before the High Court. The High Court disposed of all the three appeals vide common judgment and order dated 27.05.2014, thereby affirming the conviction of the accused persons and sentence imposed thereof.

5. The above judgment and order dated 27.05.2014 was challenged by filing special leave petition before this Court. Appellants Mukarrab and Arshad for the very first time raised the claim of juvenility before this Court. This Court vide order dated 12.09.2014 issued notice qua present appellants only viz. accused-Mukarrab and accused-Arshad, only with regard to their claim that they are minors under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000. The trial court which had conducted the trial was directed to examine the aspect of juvenility of the present appellants and submit a report. As noted earlier, the special leave petitions qua other accused were dismissed.

6. VIIIth Additional District and Sessions Judge, Moradabad conducted an inquiry and recorded his findings in a report dated 28.10.2014. The learned Judge concluded that in all probabilities on the

date of occurrence, accused-Mukarrab could not have been younger than 22 years 2 months 21 days and accused-Arshad, than 19 years 2 months 21 days on the date of the incident, thereby negatived the claim of juvenility raised by the two accused-appellants. However, on perusal of the above report dated 28.10.2014 as well as the objections filed thereagainst, certain doubts were raised concerning the genuineness of the report. Accordingly, vide order dated 06.04.2016, this Court observing that there is no document from which date of birth of the appellants could be ascertained, directed ossification test to be conducted, so as to ascertain the age of the appellants.

7. Accused-Mukarrab and accused-Arshad who were lodged in Mathura and Hardoi jails respectively in U.P. were produced before the Medical Board constituted at the All India Institute of Medical Science (AIIMS), New Delhi on 02.05.2016 for medical examination (ossification test for ascertaining bone age). Medical Board constituted at AIIMS, New Delhi in its report dated 05.05.2016, opined that the age of both the accused ranges between 35-40 years on the date of the examination.

8. The short question falling for consideration in these appeals is that whether the appellants Mukarrab and Arshad were juveniles on the date of the occurrence and the question of admissibility and reliability of medical opinion in age determination under the Juvenile Justice (Care and Protection of Children) Act, 2000 vis-à-vis juvenility of the accused at the time of committing the offences.

9. We have heard the parties before us and have perused the materials and the medical report available on record.

10. Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juvenile in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted.

11. Time and again, the questions arise: How to determine age in the absence of birth certificate? Should documentary evidence be preferred over medical evidence? How to use the medical evidence? Is the standard of proof, a proof beyond reasonable doubt or can the age be determined by preponderance of evidence? Should the person whose age cannot be determined exactly, be given the benefit of doubt and be treated as a child? In the absence of a birth certificate issued soon after birth by the concerned authority, determination of age becomes a very difficult task providing a lot of discretion to the Judges to pick and choose evidence. In different cases, different evidence has been used to determine the age of the accused.

12. This Court in Arnit Das v. State of Bihar (2000) 5 SCC 488, clarified that the review of judicial opinion shows that the Court should not take a hyper-technical approach while appreciating evidence for determination of age of the accused. If two views are possible, the Court should lean in

favour of holding the accused to be a juvenile in borderline cases. This approach was further reiterated by this Court in Rajindra Chandra v. State of Chhatisgarh and Another (2002) 2 SCC 287, in which it laid down that the standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.

13. It is noteworthy that the Juvenile Justice (Care and Protection of Children) Act, 2000 does not lay down any fixed criteria for determining the age of the person. Section 49(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides for presumption and determination of age 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." From a reading of the above provision, it is clear that it provides that when it appears to the competent authority namely, the Board that the person brought before it is a juvenile, the Board is obliged to make it clear as to the age of that person and for that purpose the Board shall take such evidence as may be necessary and then record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.

14. Under Rule 12, the Board is enjoined to take evidence for determination of age. Rule 12 is 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 off 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."

15. Summarizing the legal position as to the claim of juvenility and observing that such plea can be raised at any stage and after referring to various decisions, three-Judges Bench of this Court in Abuzar Hossain alias Gulam Hossain v. State of West Bengal (2012) 10 SCC 489 held as under:-

"39. Now, we summarise the position which is 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 are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh (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 hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act 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."

16. In the present case, the appellants by filing applications under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Rule 12 of the Juvenile Justice Rules, 2007 have claimed that at the time of committing the offences they were juvenile i.e. below the age of 18 years. Appellant-Mukarrab has claimed that he was born on 01.07.1978 and thus, on the date of the incident i.e. 22.03.1994, he was a child aged 15 years 8 months 22 days. Likewise, appellant-Arshad has claimed that he was born on 05.02.1979 and thus on the date of the incident i.e. 22.03.1994, he was a child aged 15 years 1 month 17 days. Appellants did not raise the plea of juvenility before any of the previous fora; it is only before this Court that they have raised the plea of juvenility.

17. As already noted, by an order dated 18.02.2016, this Court had directed the concerned District and Sessions Judge to conduct an inquiry and submit a report as to the age of the appellants (Mukarrab and Arshad). As per the report submitted by the VIIIth Additional District and Sessions Judge, Moradabad both the appellants (Mukarrab and Arshad) were major on the date of the incident. After perusing the report of the District Judge, by order dated 06.04.2016, this Court has directed medical examination of the appellants (Mukarrab and Arshad) to be conducted by a duly constituted Medical Board of the AIIMS, New Delhi. Accordingly, the doctors of AIIMS have examined the appellants (Mukarrab and Arshad) and given their opinion as under:-

> "Alleged history in Brief: On perusal of the documents submitted to AIIMS, it was revealed that the year of commission of crime was 1994 i.e. 22 years before today i.e. 02.05.2016.
>
> The said accused Mukarrab alleged his date of birth to be 1st July, 1978.
>
> The said accused Arshad has submitted the documentary proof of his age stating date of Birth as 5th February, 1979.
>
> Examination Proceedings: Both the accused were examined after taking due informed consent along with signature and left thumb impression.
>
> .....
>
> Their physical, dental and radiological examinations were carried out. X- ray examination of Skull (AP and lateral view), Sternum (AP and lateral view) and Sacrum (lateral view) were advised and performed. There was no indication for Dental X-rays since both accused were much beyond 25 years of age in any case.

Physical and Dental Examination: In both cases, general physical examination findings are consistent with findings of normal adult male. Dental examination shows presence of complete 8 sets of permanent teeth in all 4 quadrants.

Report of Radiological Examination-

Mukarrab Medical end of clavicle fused-age>more than 22 years Xiphoid process not fused with sternal body-age<40 years Manubrium not fused with sternal body-age<50 years Complete fusion of sacral bodies-age>32 years Saggital suture obliterated in posterior 1/3rd and coronal suture obliterated in lower ½-age<40 years.

Arshad Medical end of clavicle fused-age>more than 22 years Xiphoid process not fused with sternal body-age<40 years Manubrium not fused with sternal body-age<50 years Complete fusion of sacral bodies-age>32 years Saggital suture obliterated in posterior 1/3rd and coronal suture intact- age<40 years.

Opinion: Both accused have been brought for examination at AIIMS on 02.05.2016, 22 years after the alleged date of incidence. After going through the various findings of physical, dental and radiological examinations; medical board is of considered opinion that the age of accused viz. Mukarrab s/o Mr. Mulla Zafar as well as Arshad s/o Rashid is between 35-40 years on the date of examination i.e. 02.05.2016.

18. The question falling for consideration is whether the opinion of the Medical Board of AIIMS determining the age of the appellants between 35-40 years, can be accepted or not.

19. Learned Senior Counsel for the appellants contended that the general rule about age determination is that the age determined by the Medical Board vary plus or minus two years but the Medical Board in this case had fixed the age of the appellants at 35-40 years and going by the general rule, the age of the appellants is to be estimated as 38 years on the date of medical examination and giving additional benefit of one year in lowering the age in terms of Rule 12(3)(b), age of the appellants is to be determined as 37 years as on the date of medical examination on 02.05.2016. It was, therefore, submitted that taking the age of the appellants as 37 years as on 02.05.2016 which means that at the time of commission of the offence in 1994, the appellants would have been only aged about 15 years and, therefore, the benefit of Juvenile Justice Act to be extended to the appellants. Contending that the benefit of benevolent provisions of Juvenile Justice Act and the Rules must be extended to the appellants herein, learned Senior Counsel for the appellant relied upon Darga Ram alias Gunga v. State of Rajasthan (2015) 2 SCC 775 wherein it has been held as under:-

> "16. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radio diagnosis and Forensic Medicine has determined his age to be "about" 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination, no matter the advances made in that field. That being so, in terms of Rule 12(3)(b) the appellant may even be entitled to the benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true

> age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination.
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> 17. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination.

Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile."

20. Per contra, learned counsel for the State submitted that the ossification test is not the sole criteria for determining the age and that the medical opinion has to be considered alongwith other cogent evidence. In support of this contention, reliance was placed upon Babloo Pasi v. State of Jharkhand and Anr. (2008) 13 SCC 133.

21. A reading of the above decision in Darga Ram alias Gunga's case shows that courts need to be aware of the fact that age determination of the concerned persons cannot be certainly ascertained in the absence of original and valid documentary proof and there would always lie a possibility that the age of the concerned person may vary plus or minus two years. Even in the presence of medical opinion, the Court showed a tilt towards the juvenility of the accused. However, it is pertinent to note that such an approach in Darga Ram alias Gunga's case was taken in the specific facts and circumstances of that particular case and any attempt of generalising the said approach could not be justifiably entertained.

22. It is well-accepted fact that age determination using ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years, which is true in the present case. After referring to Bhola Bhagat's case and other decisions, in Babloo Pasi's case, this Court held as under:-

> "18. Nevertheless, in Jitendra Ram v. State of Jharkhand (2006) 9 SCC 428 the Court sounded a note of caution that the aforestated observations in Bhola Bhagat (1997) 8

SCC 720 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 and each case has to be considered on the basis of the materials brought on record.

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 (2000) 5 SCC 428 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."

23. In Criminal Appeal No. 486 of 2016 dated 12.05.2016, Parag Bhati (Juvenile) through Legal Guardian-Mother-Smt. Rajni Bhati v. State of Uttar Pradesh and Anr., after referring to Abuzar Hossain case and other decisions of this Court, this Court held as under:-

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

27. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea

> of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue." [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.

24. Keeping in view the above principles, let us consider the medical opinion of the Medical Board determining the age of the appellants as between 35-40 years on the date of examination that is on 02.05.2016. This wide variation in the age, even as per medical opinion is because of the reason that it was now too late, because of the advanced age of the appellants to have precise determination of his age. As noted earlier, such a plea of juvenility is raised for the first time in this Court and the same has to be considered on the material brought on record before this Court. On the basis of the age of the appellants (Mukarrab and Arshad) determined between 35-40 years in May, 2016, giving a variation of two years in upper age limit i.e. age of the appellants would be 38 years. Giving additional benefit of lowering their age by one year in terms of Rule 12(3)(b) would bring their age as 37 years as on May, 2016. That means the appellants are supposed to be born in 1979 and at the time of occurrence in 1994, the appellants would have been of around 15 years of age.

25. Having regard to the circumstances of this case, a blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion by the radiological examination. At page 31 of Modi's Text Book of Medical Jurisprudence and Toxicology, 20th Edn., it has been stated as follows:

> "In ascertaining the age of young persons radiograms of any of the main joints of the upper or the lower extremity of both sides of the body should be taken, an opinion should be given according to the following table, but it must be remembered that too much reliance should not be placed on this table as it merely indicates an average and is likely to vary in individual cases even of the same province owing to the eccentricities of development." Courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person but 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.
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> 26. In a recent judgment, State of Madhya Pradesh v. Anoop Singh (2015) 7 SCC 773, it was held that the ossification test is not the sole criteria for age determination. Following Babloo Pasi and Anoop Singh's cases, we hold that ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. In fact in the medical report of the appellants, it is stated that there was no indication for dental x-rays since both the accused were beyond 25 years of age.

27. At this juncture, we may usefully refer to an article "A study of wrist ossification for age estimation in pediatric group in central Rajasthan", which reads as under:-

"There are various criteria for age determination of an individual, of which eruption of teeth and ossification activities of bones are important. Nevertheless age can usually be assessed more accurately in younger age group by dentition and ossification alongwith epiphyseal fusion.

[Ref: Gray H. Gray's Anatomy. 37th ed. Churchill Livingstone Edinburgh London Melbourne and New York: 1996; 341-342];

A careful examination of teeth and ossification at wrist joint provide valuable data for age estimation in children.

[Ref: Parikh CK. Parikh's Textbook of Medical Jurisprudence and Toxicology. 5th edn.: Mumbai Medico-Legal Centre Colaba:1990;44-45];

..... Variations in the appearance of center of ossification at wrist joint shows influence of race, climate, diet and regional factors. Ossification centres for the distal ends of radius and ulna consistent with present study vide article "A study of Wrist Ossification for age estimation in pediatric group in Central Rajasthan" by Dr. Ashutosh Srivastav, Senior Demonstrator and a team of other doctors, Journal of Indian Academy of Forensic Medicine (JIAFM), 2004; 26(4). ISSN 0971-0973].

28. In the present case, their physical, dental and radiological examinations were carried out. Radiological examination of Skull (AP and lateral view), Sternum (AP and lateral view) and Sacrum (lateral view) was advised and performed. As per the medical report, there was no indication for dental x-rays since both the accused were much beyond 25 years of age. Therefore, the age determination based on ossification test though may be useful is not conclusive. An X-ray ossification test can by no means be so infallible and accurate a test as to indicate the correct number of years and days of a person's life.

29. Let us consider the medical report in the facts and circumstances of the present case. The learned counsel on behalf of the respondent-State has brought to our notice that the appellant-Mukarrab is involved in twenty four cases of various offences allegedly committed between 1988 and 1995. He is alleged to have committed murder and robbery in the year 1988. Likewise, appellant-Arshad is also allegedly involved in commission of serious offences from 1993 to 2003. Proceedings in the context of such offences are stated to be still pending against the appellants before various courts. Learned Counsel for the State has produced a chart before us to show that the appellant-Mukarrab is involved in at least twenty cases for various offences right from the year 1988 in Case Nos. 160/1988, 327/1989, 96/1989, 184/1989 etc. and other cases under Sections 25A Act, 394 IPC, 323, 352, 504, 506 IPC, 323, 352, 504, 506 IPC and other offences till 2006. Likewise, appellant-Arshad is involved in at least ten cases for various offences right from the year 1993 in case Nos. 102/1993, 50/1994, 80/1994, 878/1994 etc. and other cases under Sections

393, 363, 376, 147, 148, 149, 302, 147, 504, 506, 307 IPC respectively till 2003.

30. We are referring to the chart produced by the State neither for taking into account the history sheet of the present appellants for the purpose of ascertaining criminal antecedents of the appellants nor casting any remarks on the nature of the offences for which the appellants are proceeded with. We are referring to the chart only for the limited purpose of arriving at a logical and definite conclusion as to the age of the appellants. As discussed earlier, in para No. 24 had the appellants been born in 1979, in the years 1988, 1989, 1990, the appellant-Mukarrab would have been only in the age of 9, 10, 11 years respectively. In the year 1993, (first case in which appellant-Arshad involved) the appellant-Arshad would have been only 14 years of age. Had it been so, when the appellants were produced in those cases the appellants would have been considered as 'children' by the very appearance. They would have been dealt with accordingly by the concerned juvenile court and the matters would not have been kept pending till this date. This, in our view, is yet another reason that the opinion of the Medical Board determining the age of the appellants as 35-40 years in May, 2016 cannot be relied upon.

31. In the facts and circumstances of the case, the opinion of the medical board in determining the age of the appellants cannot be relied upon so as to give benefit under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. In the absence of other cogent evidence, the plea of juvenility of the appellants is liable to be rejected. The special leave petitions qua other accused were already dismissed vide order dated 12.09.2014 as mentioned hereinbefore. Hence, the appeals of these appellants are also dismissed.

.....J. [A.K. SIKRI] .....J. [R. BANUMATHI] New Delhi;

November 30, 2016.