

Shah Nawaz vs State Of U.P.& Anr on 5 August, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3107, 2011 AIR SCW 4632, AIR 2011 SC (CRIMINAL) 1744, 2011 (5) ALL LJ 580, 2011 (4) AIR KANT HCR 795, 2011 CRI LJ (SUPP) 210 (SC), (2012) 2 RAJ LW 1103, (2011) 3 RECCRIR 884, (2011) 3 SIM LC 185, (2011) 3 DLT(CRL) 645, (2011) 4 PAT LJR 172, 2011 ALLMR(CRI) 3889, (2011) 3 KER LT 926, (2011) 50 OCR 207, 2011 CRILR(SC MAH GUJ) 838, (2011) 3 ALLCRIR 3013, (2011) 8 SCALE 423, (2011) 3 UC 1772, (2011) 2 ALD(CRL) 818, (2011) 74 ALLCRIC 871, 2011 CRILR(SC&MP) 838, (2011) 3 CRIMES 171, (2011) 2 MADLW(CRI) 657, (2011) 2 CRILR(RAJ) 838, 2011 (13) SCC 751, (2012) 2 GUJ LR 1808, (2011) 3 CURCRIR 385, 2011 CALCRILR 3 457, 2012 (2) SCC (CRI) 864

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1531 OF 2011

(Arising out of S.L.P. (Crl.) No.3361 of 2011)

Shah Nawaz

.... Appellant (s)

Versus

State of U.P. & Anr.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal is directed against the final judgment and

order dated 10.12.2010 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 716 of 2009 whereby the High Court dismissed the criminal revision filed by the appellant herein.

3) Brief facts:

(a) The appellant claims to have born on 18.06.1989 in Village and Post Dadheru Kala, Police Station Charthawal, District Muzaffarnagar, U.P. He was admitted in Class I in Nehru Preparatory School, Khurd, Muzaffarnagar on 05.07.1994 and studied there till 20.05.1998. Thereafter, on 04.07.1998, he got admission in Class VI in the National High School Dadheru, Khurd-O-Kalan, Muzaffarnagar and studied there till Class X. The date of birth in the mark sheet is mentioned as 18.06.1989.

(b) On 04.06.2007, a First Information Report (in short "the FIR") was lodged by Khatizan, wife of Nawab-the deceased, against the appellant herein and three others for the alleged occurrence which culminated into Crime Case No. 215 of 2007 at Police Station Charthawal, District Muzaffarnagar, U.P. under Sections 302 and 307 of the Indian Penal Code, 1860 (in short "the IPC").

(c) On 12.06.2007, the mother of the appellant submitted an application before the Juvenile Justice Board (in short "the Board"), Muzaffarnagar, U.P. stating that the appellant was a minor at the time of the alleged occurrence. After examining the witnesses, the Board, vide judgment and order dated 24.01.2008, declared the appellant juvenile under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act").

(d) Against the judgment of the Board, Khatizan - the wife of the deceased filed Criminal Appeal No. 11 of 2008 before the Additional Sessions Judge, Muzaffarnagar, U.P. under Section 52 of the Act. The State - respondent No.1 did not file any appeal. Vide judgment dated 13.01.2009, the Additional Sessions Judge allowed the appeal and set aside the order dated 24.01.2008 passed by the Board.

(e) Challenging the judgment dated 13.01.2009 passed by the Additional Sessions Judge, the appellant filed Criminal Revision No. 716 of 2009 before the High Court of Allahabad.

The High Court, by the impugned judgment dated 10.12.2010, dismissed the criminal revision. Hence this appeal by way of special leave.

4) Heard Mr. Dinesh Kumar Garg, learned counsel for the appellant and Mr. R.K. Gupta, learned counsel for the State.

Despite notice, no one has entered appearance on behalf of respondent No.2.

5) Before considering the merits of the claim of the appellant and the stand of the State, let us consider Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'the Rules') which 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 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."

6) In the light of the above procedure to be followed in determining the age of the child or juvenile, let us consider various decisions of this Court.

7) In *Raju and Anr. vs. State of Haryana* (2010) 3 SCC 235, this Court had admitted "mark sheet" as one of the proof in determining the age of the accused person. In that case, the appellants therein Raju and Mangli along with Anil alias Balli and Sucha Singh were sent up for trial for allegedly having committed an offence punishable under Section 302 read with Section 34 of the IPC. Accused Sucha Singh was found to be a juvenile and his case was separated for separate trial under the Act. Others were convicted under Section 302 read with Section 34 of the IPC and were sentenced to imprisonment for life and to pay a fine of Rs. 5,000/-. Apart from contending on the merits of the prosecution case, insofar as appellant No. 1, Raju, is concerned, the counsel appearing for him submitted that on the date of the incident that is on (31.03.1994), he was a juvenile and as per his mark sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Learned counsel submitted that having regard to the recent decision of this Court in *Hari Ram vs. State of Rajasthan & Anr.*, (2009) 13 SCC 211, appellant No. 1 must be held to have been a minor on the date of the incident and the provisions of the Act would apply in his case. Learned counsel further contended that the appellant No. 1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case. On merits, while accepting the claim of the learned counsel for accused-appellant, this Court altered the conviction and sentence and convicted under Section 304 Part I read with Section 34 IPC instead of Section 302 read with Section 34 IPC. As far as appellant No. 1, namely, Raju was concerned, while

accepting the entry relating to date of birth in the mark sheet referred his case to the Board in terms of Section 20 of the Act to be dealt under the provisions of the said Act in keeping with the provision of Section 15 thereof. It is clear from the said decision that this Court has accepted mark sheet as one of the proof for determining the age of an accused person.

8) Similarly, this Court has treated the date of birth in School Leaving Certificate as valid proof in determining the age of an accused person. In *Bhoop Ram vs. State of U.P.* (1989) 3 SCC 1, this Court considered whether the appellant therein is entitled lesser imprisonment than imprisonment for life and should have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 (1 of 1952). The following conclusion in para 7 is relevant which reads as under:-

"7.....The first is that the appellant has produced a school certificate which carries the date 24-6-1960 against the column "date of birth". There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars....

"

It is clear from the above decision that this Court relied on the entry made in the column "date of birth" in the School Leaving Certificate.

9) In *Rajinder Chandra vs. State of Chhattisgarh and Anr.* (2002) 2 SCC 287, this Court once again considered the entry relating to date of birth in the mark sheet and concluded as under:

"5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In *Arnit Das v. State of Bihar* this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court, squarely applies to the facts of the present case.

10) In *Arnit Das vs. State of Bihar*, (2000) 5 SCC 488, this Court held 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 is 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 juvenile in borderline cases.

11) In Ravinder Singh Gorkhi vs. State of U.P. (2006) 5 SCC 584 with regard to the entries made in School Leaving Certificate, this Court has observed as under:-

"17. The school-leaving certificate was said to have been issued in the year 1998. A bare perusal of the said certificate would show that the appellant was said to have been admitted on 1-8-1967 and his name was struck off from the roll of the institution on 6-5-1972. The said school-leaving certificate was not issued in the ordinary course of business of the school. There is nothing on record to show that the said date of birth was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Evidence Act. No statement has further been made by the said Headmaster that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school-leaving certificate, evidently had been prepared for the purpose of the case. All the necessary columns were filled up including the character of the appellant. It was not the case of the said Headmaster that before he had made entries in the register, age was verified. If any register in regular course of business was maintained in the school, there was no reason as to why the same had not been produced."

12) In Pradeep Kumar vs. State of U.P. 1995 Supp (4) SCC 419, this Court considered the commission of offence by persons below 16 years of age. The question before a three-

Judge Bench was whether each of the appellants in those appeals was a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and as such on conviction under Section 302 read with Section 34 IPC should have been sent to an approved school for detention till the age of 18 years. At the time of granting special leave, appellant, by name, Jagdish produced High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant -

Krishan Kant produced horoscope which showed that he was 13 years of age at the time of occurrence. So far as appellant -

Pradeep was concerned, a medical report was called for by this Court which disclosed that his date of birth as 07.01.1959 was acceptable on the basis of various tests conducted by the medical authorities. In the above factual scenario/details, this Court concluded as under:-

"3. It is thus proved to the satisfaction of this Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Section 302/34 of the Act"

After saying so and after finding that the appellants were aged more than 30 years, this Court directed not to send them to an approved school under the U.P. Children Act for detention, while sustaining the conviction of the appellants under all the charges framed against them, quashed the sentences awarded to them and ordered their release forthwith.

13) The applicability of the Act and the Rules in respect of "Juvenile" and "Juvenile in conflict with law" have been elaborately considered by this Court in Hari Ram (supra).

After analyzing the Scheme of the Act and various Rules including Rule 12 and earlier decisions of this Court laid down various principles to be followed. After applying those principles and finding that the appellant therein was 16 years of age on the date of the commission of the alleged offence and had not been completed 18 years of age, remitted the matter to the Board for disposal in accordance with law.

Discussion on merits:

14) In the light of the above principles, now let us consider the claim of the appellant. According to him, on 18.06.1989, he was born in Village and Post Dadheru Kala, Police Station Charthawal, District Muzaffarnagar, U.P. On 05.07.1994, he was admitted in Class I in Nehru Preparatory School, Khurd, Muzaffarnagar. The appellant left the said school on 20.05.1998. On 04.07.1998, he was admitted in Class VI in the National High School Dadheru, Khurd-O-Kalan, Muzaffarnagar, U.P. On 21.05.2004, he left the said school, namely, National High School as he failed in High School.

From Class VI till Class X the appellant remained and studied continuously in the aforesaid school. The date of birth in the mark sheet is mentioned as 18.06.1989. The alleged occurrence took place on 04.06.2007. The FIR was lodged on 04.06.2007 which culminated into Crime Case No. 215 of 2007 at Police Station Charthawal, District Muzaffarnagar, U.P. under Sections 302 and 307 of the IPC. On 12.06.2007, the mother of the appellant submitted an application before the Board at Muzaffarnagar stating that the appellant was a minor at the time of alleged occurrence. The appellant was provided a School Leaving Certificate dated 11.07.2007 from Nehru Preparatory School, Khurd, Muzaffarnagar. The mother of the appellant made a statement dated 26.07.2007 regarding the age of her son. She was cross-examined at length. On 16.10.2007, the statement of clerk of Nehru Preparatory School was recorded by the Board. The said clerk brought the entire records maintained by the School. The said clerk was also cross-examined at length.

15) The Board, vide judgment and order dated 24.01.2008, declared the appellant juvenile under the Act. Against the judgment of the Board, the complainant Smt. Khatizan, wife of deceased Nawab filed Criminal Appeal No. 11 of 2008 under Section 52 of the Act before the learned Additional Sessions Judge, Muzaffarnagar. It is relevant to point out that the State, who is the prosecuting agency did not file any appeal.

The Additional Sessions Judge, Muzaffarnagar recorded the statement of Guljar Hussain, Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar on 07.08.2008. By order dated 13.01.2009, the Additional Sessions Judge allowed the said appeal filed by the complainant and set aside the order dated 24.01.2008 passed by the Board.

16) Aggrieved by the order of the Additional Sessions Judge, the appellant filed Criminal Revision No. 716 of 2009 before the High Court. The High Court dismissed the said Revision mainly on the ground that in the absence of any matriculation or equivalent certificate and considering the language used in Rule 12 with reference to only "Certificate" and not "mark sheet", dismissed the Revision petition.

17) We have already referred to the decision of this Court about the entry relating to the date of birth made in the mark sheet of High School examination. The appellant has produced mark sheet of High School examination issued by the school authority, namely, National High School, Dadheru, Khurd-O-Kalan, Muzaffarnagar. A perusal of the above said certificate makes reference to appellant's Roll No., his name, Date of Birth, name of the school, details regarding various subjects, maximum marks, marks obtained and ultimate result in the examination. The certificate contained signature of the Clerk Salim Ahmed, who prepared the same, the signature of the examiner and signature and seal of the Head Master. It is dated 21.05.2004.

18) Another document relied on by the appellant is School Leaving Certificate dated 11.07.2007 issued by Nehru Preparatory School, Khurd, Muzaffarnagar wherein it noted the registration no., name of the school, student's name, date of birth (18.06.1989) written in words also, Father's name, occupation, caste, residential address, date of admission in school, date of leaving of school. The certificate contained the signature and seal of the Head Master and the same is dated 11.07.2007.

19) The documents furnished above clearly show that the date of birth of the appellant had been noted as 18.06.1989.

Rule 12 of the Rules categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.

20) We are satisfied that the entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-

O-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded as 18.06.1989 in School Leaving Certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said school at S. No. 1382 which have been proved by the statement of the Principal of that school recorded before the Board. Apart from the clerk and the Principal of the school, the

mother of the appellant has categorically stated on oath that the appellant was born on 18.06.1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18.06.1989, hence her statement corroborated his academic records which clearly depose his date of birth as 18.06.1989. Accordingly, the appellant was a juvenile on the date of occurrence that is 04.06.2007 as alleged in the FIR dated 04.06.2007.

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

22) In the light of the above discussion, we hold that from the acceptable records, the date of birth of the appellant is 18.06.1989, the Additional Sessions Judge and the High Court committed an error in taking contrary view. While upholding the decision of the Board, we set aside the orders of the Additional Sessions Judge dated 13.01.2009 and the High Court dated 10.12.2010. Accordingly, the appellant is declared to be a juvenile on the date of commission of offence and may be proceeded in accordance with law. The appeal is allowed.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN)
NEW DELHI;

AUGUST 05, 2011.