

## **Raju vs The State Of Haryana on 22 February, 2019**

**Equivalent citations: AIR 2019 SUPREME COURT 1136, AIR ONLINE 2019 SC 98, 2019 CRI LJ 1793, (2019) 109 ALLCRIC 115, 2019 (14) SCC 401, (2019) 1 ALD(CRL) 711, (2019) 1 CRILR(RAJ) 265, (2019) 2 ALLCRILR 208, 2019 (2) KCCR SN 115 (SC), (2019) 2 MAD LJ(CRI) 29, (2019) 2 PAT LJR 84, (2019) 2 RECCRIR 189, (2019) 4 SCALE 398, (2019) 74 OCR 583, 2019 CRILR(SC MAH GUJ) 265, 2019 CRILR(SC&MP) 265, (2020) 1 MH LJ (CRI) 407, 2020 (1) SCC (CRI) 370, AIR 2019 SC( CRI) 1483**

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**Bench: Indira Banerjee, Mohan M. Shantanagoudar, N.V. Ramana**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1175 OF 2014

RAJU

... APPELLANT

VERSUS

THE STATE OF HARYANA

... RESPONDENT

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

This appeal is directed against the final judgment and order dated 24.08.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 1830 of 2003, by which the High Court dismissed the appeal filed by the Appellant herein challenging the judgment of conviction under Section 376(2)(g) of the Indian Penal Code (IPC) dated 08.11.2002 and order of sentence dated 11.11.2002 rendered by the Additional Sessions Judge, Gurgaon, in Sessions Case No. 5/2001.

Reason:

2. The brief facts leading to the instant appeal are that an FIR was lodged against the Appellant Raju s/o Rajendar Singh, and two other persons, viz. Raju s/o Bhim and Raja @ Raj Kumar s/o Makhsi, alleging that the three persons had intercepted the prosecutrix when she was passing by some fields along with her one-year-old brother and had taken her to a field nearby, whereupon Raju s/o Bhim and Raja @ Raj Kumar s/o Makhsi engaged in the gang-rape of the prosecutrix, while the Appellant stood outside the field. The prosecutrix was aged fifteen years at the time of the incident, which occurred on 14.09.2000. The three accused were convicted for the offence punishable under Section 376(2)(g) of the IPC, and sentenced to 10 years' rigorous imprisonment and a fine of Rs. 500/- and further two months' rigorous imprisonment in default of payment of fine. Aggrieved by the same, the three accused appealed to the High Court.

3. The Appellant, inter alia, raised the defence before the High Court that he was aged less than 18 years at the time of commission of the offence, i.e. 14.09.2000, and hence was entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, "the 2000 Act"). The High Court, however, rejected such contention and affirmed the conviction of the three accused, including the Appellant.

4. Aggrieved by the above judgment, the Appellant filed the instant appeal, inter alia raising the plea of juvenility again. The Appellant relied upon a transfer certificate issued in his favour by the Dayanand Middle School, Sohna, Gurgaon which showed his date of birth to be 12.07.1984. He also relied upon a certificate issued by the Government Senior Secondary School (Boys), Sohna which showed his date of birth to be the same. It was submitted by the Appellant before this Court that the certificates in question prima facie entitled him to claim the conduct of an inquiry in terms of Section 7A of the 2000 Act. The Appellant referred to the decisions of this Court in *Murari Thakur v.*

*State of Bihar*, (2009) 16 SCC 256, *Dharambir v. State (NCT of Delhi)*, (2010) 5 SCC 344, and *Jitendra Singh @ Babboo Singh v. State of U.P.*, (2010) 13 SCC 523.

5. Keeping in mind such circumstances and the certificates relied upon, this Court vide order dated 09.08.2012 directed the Registrar (Judicial) of this Court to conduct an inquiry in respect of the age of the Appellant in terms of Section 7A of the 2000 Act read with the rules framed thereunder, and to submit a report to this Court within four months from the order.

6. This Court received such report on 07.01.2013, which determined that the age of the Appellant was 16 years, 2 months and 2 days at the time of commission of the offence and that he was thus a juvenile at that time. Thereafter, arguments were heard and judgement reserved. However, subsequently, the State raised the argument that the Court had not looked into the question of whether the plea of juvenility as decided by the Registry of this Court should be given precedence over the view of the High Court. By an order dated 25.04.2014, this Court directed that the appeal be

heard further. Shri Siddhartha Dave was subsequently appointed as amicus curiae to assist the Court.

7. It was submitted by the learned amicus curiae that the learned Registrar (Judicial) of this Court had, after duly calling for records and appreciating the material adduced, reached the conclusion that the Appellant was a juvenile at the time of commission of the offence, and there was no reason to deny the Appellant the benefit of such finding. Moreover, he submitted that seeing that it was upon the direction of this Court that the learned Registrar had conducted the inquiry under Section 7A of the 2000 Act and the rules framed thereunder, and had submitted his report to this Court after conducting such inquiry in accordance with law, the report may be treated as having been made by this Court itself.

8. Heard the learned amicus curiae and advocate for the State, and perused the material on record.

9. It is by now well-settled, as was held in *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211, that in light of Sections 2(k), 2(l), 7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act (also see *Mohan Mali v. State of Madhya Pradesh*, (2010) 6 SCC 669; *Daya Nand v. State of Haryana*, (2011) 2 SCC 224; *Dharambir v. State (NCT) of Delhi* (supra); *Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh*, (2013) 11 SCC 193). It is equally well-settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7A of the 2000 Act (see *Dharambir v. State (NCT) of Delhi*, (supra), *Abuzar Hossain v. State of West Bengal*, (2012) 10 SCC 489; *Jitendra Singh @ Babboo Singh v. State of UP*, (supra); *Abdul Razzaq v. State of Uttar Pradesh*, (2015) 15 SCC 637).

10. In light of the above legal position, it is evident that the Appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the Trial Court, in light of Section 7A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the Appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the Appellant.

11. Before proceeding further, it would be useful to refer to Section 7A of the 2000 Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (in short, “the 2007 Rules”), which deal with the making of an inquiry by the Court in case of a claim of juvenility. Section 7A of the 2000 Act is as follows:

“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.” (emphasis supplied)

12. Sub-rule (3) of Rule 12 of the 2007 Rules states the following regarding the procedure to be followed for age determination:

“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.” (emphasis supplied)

13. It is evident from a perusal of the above that if any Court, including this Court, is of the opinion that an accused person was a juvenile on the date of commission of the offence, or if a claim of

juvenility is raised before it, the Court must conduct an inquiry regarding the determination of the age of the accused. The evidence collected by way of such inquiry, as is specified in clauses (a)(i), (ii), and (iii) of Rule 12(3), or in the absence whereof, clause (b) of the same, is treated as conclusive proof of the age of the accused. In such a situation, it would be clear that such an inquiry conducted by this Court would be given precedence over a view of the age of the accused taken by the High Court. It is relevant to note here itself that in this case, the High Court decided the issue merely upon an assessment of the material on record without resorting to the procedure governing inquiries for the determination of age as laid out in Section 7A of the 2000 Act and Rule 12 of the 2007 Rules.

14. At this point, it is necessary to briefly discuss the findings of the High Court in the impugned judgment regarding the age of the accused to underscore that it has not conducted the inquiry stipulated as per Section 7A and Rule 12. Before the High Court, the Appellant submitted a report of the Assistant Commissioner of Police, Bhondsi, Gurgaon to the effect that his date of birth was 12.07.1984, thereby claiming the benefit of the 2000 Act. This plea was rejected on the grounds of failure to raise the plea of juvenility before the Trial court; non-production of birth certificate in spite of an opportunity being granted to do so; absence of the Appellant's name in the birth register dated 12.07.1984 and for the years 1983-84 and 1984-85; non-corroboration of the date of birth certificates issued by schools attended by the Appellant through other documentary evidence; non-matching of the name on such certificates (Raj Kumar) with the name of the Appellant as brought on record (Raju); and non-corroboration of the address of the Appellant through such certificates, which simply stated that the date of birth of the student named Raj Kumar was 12.07.1984.

15. The High Court evidently did not even frame its discussion in terms of whether the evidence brought on record was sufficient to conduct an inquiry under the 2000 Act and the 2007 Rules, let alone order and conduct such an inquiry. On the contrary, it simply recorded that the evidence did not go to show that the Appellant was a juvenile at the time of the commission of the offence, and proceeded to affirm the conviction of the Appellant on merits.

16. Therefore, it is evident that the only inquiry as stipulated under the 2000 Act and the 2007 Rules was conducted by the Registrar (Judicial) upon the directions of this Court, after the Court was satisfied upon going through the school certificates adduced by the Appellant that the certificates in question prima facie entitled him to claim the conduct of such an inquiry. In such a situation, the question regarding whether precedence may be given to the inquiry of a Registrar (Judicial) of this Court over the opinion of the High Court regarding the age of an accused can be restated as whether such inquiry conducted by the Registrar (Judicial) upon the direction of this Court, if thereafter affirmed by this Court, would amount to an inquiry conducted by this Court itself. If this be the case, the findings of such inquiry would prevail over the view taken by the High Court, as is evident from the preceding discussion.

17. We are of the opinion that the above question must be answered in the affirmative. This Court, on previous occasions as well, has adopted the practice of directing the Registrar (Judicial) to conduct the inquiry in terms of Rule 12 of the 2007 Rules on behalf of this Court, and accepted the findings made therein (see *Dharambir v. State (NCT) of Delhi*, (supra)). Seeing that the Registrar

(Judicial) is a District Judge serving on deputation at the Supreme Court, recourse to his or her assistance in the form of collecting evidence and arriving at a finding regarding the claim of juvenility of the person concerned may be undertaken by this Court in order to save its judicial time. However, it must be stressed that the findings in an inquiry conducted by the Registrar (Judicial) would not per se prevail upon a contrary view taken by the High Court. Only after this Court applies its judicial mind to such report with due regard to the confines of the procedure stipulated in Section 7A of the 2000 Act and Rule 12 of the 2007 Rules, and only if it thereafter confirms the findings in such report would the same prevail upon a contrary view taken by the High Court which is not based upon any such inquiry.

18. We may now undertake to consider the findings in the report submitted by the Registrar (Judicial). As already noted, as per the report, the age of the Appellant was 16 years, 2 months and 2 days at the time of commission of the offence and he was thus a juvenile at that time. In the said report, the learned Registrar referred to the original Transfer Certificate in Hindi issued by the Headmaster, Dayanand Arya Middle School, Sohna dated 24.03.2012 and the Transfer Certificate issued by the Principal, Government Senior Secondary School (Boys), Sohna dated 12.12.2000. These certificates contain the official seal of the respective schools and the signatures of the respective authorities, and state the name of the student as Raj Kumar, son of Rajendar Singh, and record his date of birth as 12.07.1984. A certificate dated 07.12.2010 was also issued by the Principal of the Government Senior Secondary School (Boys), Sohna, verifying that the student named Raj Kumar, son of Rajendar Singh, used to study at the school, and that the school records reflected his date of birth as 12.07.1984 and the name of his mother as Smt. Sarla Devi.

19. The learned Registrar also duly corroborated the contents of these certificates by referring to other school records and also examined witnesses. With respect to the Dayanand Arya Middle School, Sohna, the learned Registrar examined Mr. Suresh Chand, Teacher, appearing under the directions of the School Headmaster, who confirmed that the Transfer Certificate dated 24.03.2012 was bona fide and issued under the signature of the then Principal. The Registrar also verified the certificate by comparing it with the office copy of the same in the School Leaving Certificate Register produced before him. The original Admission and Withdrawal Register of the school was also examined, which also recorded the Appellant's date of birth as 12.07.1984, and stated that he was admitted in the school on 23.07.1992 and withdrew on 31.03.1996 after passing Class V.

20. With respect to the Government Senior Secondary School (Boys), Sohna, the learned Registrar also called for the school records, which were produced through Mrs. Nirmal Kalra, Teacher, under the instructions of the Principal of the school. She too affirmed that the Transfer Certificate dated 12.12.2000 was bona fide, and issued under the signature of the then Principal. She affirmed having compared the entries in the certificate with the corresponding entries in the relevant register of the school, copies of which had been submitted to the learned Registrar. The following details with respect to the Appellant's period of study in the school were also affirmed by Mrs. Kalra on affidavit:

S. No.	Admission Date	of Striking Off	Date of Striking Off	Reasons for Striking Off the Name
1.	14163	7.5.1996 (in	19.4.1997	Non-payment of

		Class VI)	(in Class VII)	School Funds
2.	14678	17.5.1997	March 1999	Failed in Class
		(in Class VII)	(in Class VIII)	Board Examination
3.	15546	7.7.1999	(in Class VIII)	(in Class VIII) absence

21. The learned Registrar concluded that the school transfer certificates dated 24.03.2012 and 12.12.2000, read along with the relevant entries of school registers of the respective schools, were admissible as evidence under Rule 12(3)(a)(ii) of the 2007 Rules, i.e., they were found to be in the nature of the “date of birth certificate from the school (other than a play school) first attended” as specified in the said clause, and thus accepted the Appellant’s claim of juvenility. It was also found that the certificates contained the name of the Appellant as Raj Kumar, son of Rajendar Singh, born on 12.07.1984. This name was found to be the full name of the Appellant and the name Raju appearing on the SLP record taken to be an alias, as affirmed by both his parents by way of separate affidavits.

22. In our opinion, the learned Registrar has duly affirmed the veracity and bona fide nature of the certificates adduced by the schools attended by the Appellant. At the same time, since Rule 12(3)(a)(ii) specifically mentions that the certificate showing the date of birth of the person shall be from the school first attended (other than a play school), we find that the certificate issued and school records maintained by the Dayanand Arya Middle School, Sohna, where the Appellant studied for four years till class V, as duly affirmed through the examination of a witness from such school, is sufficient to satisfy the requirement of clause (a)(ii) of Rule 12(3). Of course, it goes without saying that the certificate issued by the Government Senior Secondary School (Boys), Sohna and the accompanying school records serve to corroborate the veracity of the records furnished by the former school. It would not be out of place to highlight here that the findings in the inquiry report have also not been controverted by the State.

23. We are also conscious of the limitation envisaged under Section 7A of the 2000 Act that the evidence adduced with respect to the age of the accused cannot be in the form of mere affidavits. Due to this reason, the reliance of the learned Registrar upon affidavits to conclude that the name used in the certificates placed on record (i.e. Raj Kumar) is the full name of the Appellant and the name Raju is merely an alias is not tenable in our view. However, we find that there is sufficient evidence on record in the form of the appearance of the name of the father of the Appellant on the certificate dated 24.03.2012 issued by the Dayanand Arya Middle School, Sohna, to indicate that the name Raj Kumar appearing on such certificate was the full name of the Appellant.

24. In light of the above discussion, we are of the opinion that it has been conclusively established that the date of birth of the Appellant was 12.07.1984 and as such he was aged 16 years, 2 months and 2 days at the time of commission of the offence dated 14.09.2000. In such circumstances, we do not have any doubt that the inquiry conducted by the Registrar (Judicial) upon the direction of this

Court in the instant matter amounts to an inquiry conducted by this Court itself, and is conclusive proof of the age of the Appellant as provided in Rule 12(3) of the 2007 Rules. As the Appellant satisfies the requirement of Sections 2(k) and 2(l) of the 2000 Act, the said Act is applicable to him in full force in light of Section 7A and Section 20.

25. Criminal Appeal hereby stands allowed and the order of the High Court affirming the conviction and sentence of the Appellant under Section 376(2)(g) of the IPC is set aside. Seeing that the Appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1)(g) of the 2000 Act, we direct that the Appellant be released from custody forthwith, if he is not required to be detained in connection with any other case.

26. Before we part with this matter, we would like to place on record our appreciation for the valuable assistance rendered to this Court by Shri Siddhartha Dave, the learned amicus curiae in this matter.

.....J. [N.V. Ramana] .....J. [Mohan M. Shantanagoudar] .....J. [Indira Banerjee] New Delhi;

February 22, 2019.