

(2011) 08 GAU CK 0070
In the Gauhati High Court
Case No : PIL No. 39 of 2011

In Reference

Date of Decision : 09-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226, 32
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 16(2), 19(2), 2(1), 20
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 12(2), 12(3), 68, 98
Penal Code, 1860 (IPC) — Section 323, 325, 326

Citation : (2011) 4 GLR 235

Hon'ble Judges : C.R. Sharma, J; Amitava Roy, J

Bench : Division Bench

Advocate : M.K. Das and Ms. Swaraswati Johori, for the Appellant; P.S. Deka GA and Mr. D.K. Mishra, Amicus Curiae., for the Respondent

Judgement

Amitava Roy, J.—The instant petition has been registered suo moto on the letter dated 3.7.2011 addressed to the Hon.ble the Chief Justice of this Court by Smti. Minna Kabir, a Child Rights Activist, essentially for expediting the proceedings before the Juvenile Justice Board, Morigaon (hereafter referred to also as the, Board.) initiated on an application filed on behalf of Ramdeo Chauhan @ Rajnath Chouhan seeking his release in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, hereinafter referred to as the Act.) (as amended), read with the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short, hereafter referred to as the Rules), on a redetermination of his age in accordance with Rule 12 of the Rules. The application before the Board has been registered as petition No. 3164/2010 on 22.12.2010.

2. We have heard Mr M.K. Das, Advocate assisted by Ms Swaraswati Johari, Advocate representing Human Rights Law Network (for short, "HRLN"), a nongovernment social organization, for the applicant, Mr PS Deka, Govt. Advocate for the State of Assam and Mr DK Mishra, Senior Advocate acting as

Amicus Curiae.

3. Before advertng to the essential legal issues bearing on the reliefs prayed for, it is considered expedient to outline the factual backdrop sans, unnecessary details.

4. The applicant was made to stand a sessions trial being charged under sections 323, 325 and 326 IPC and was eventually convicted on all the charges by the judgment and order dated 31.3.98 in Sessions case No. 31(M)/1993 (corresponding to GR No. 164/1992) passed by the learned Sessions Judge, Morigaon. On such conviction he was awarded the capital punishment of death. The date of the offence was 8.3.1992. The death penalty was confirmed by this Court in Criminal Death Reference No. 1/1998 and Criminal Appeal No. 109(J)/1998. The Hon.ble Apex Court in Criminal Appeal No. 4/2010 sustained the penalty. The applicant thereafter filed a Review petition before the Hon.ble Apex Court being No. 1105/2000 for reconsideration of the determination of his age as made by the learned trial court. The Review petition was dismissed by the majority of two to one. The death penalty was eventually commuted to one of life imprisonment by His Excellency, the Governor of Assam, vide order No. GDJ. 138/2000/52 dated 20.12.02.

5. In the writ petition filed by the victims relatives before the Hon.ble Apex Court registered as Writ Petition (Civil) No. 457/ 2005 the aforementioned order of commutation was set aside on 5.9.2009. The applicant thereafter approached the Hon.ble Apex Court with a Review petition being Review Petition (Civil) No. 1378/09 which was disposed of on 19.11.2010 restoring the order of His Excellency, the Governor of Assam commuting the death sentence to one of life imprisonment.

6. The Hon.ble Apex Court in response to the plea of juvenility raised by the applicant in Review petition (Civil) No. 1378/09 observed hereinbelow in its judgment and order dated 19.11.2010:

86. Now the only question which remains to be considered is whether the petitioner is entitled to insist on a fresh look at his juvenility and a fresh consideration of his rights in view of the changes in the Juvenile Justice (Care & Protection of Children) Act, 2000 by 2006 amendment.

87. This point has not been stated in the review petition even though this was argued b the learned counsel for the petitioner.

88. Mr P.S. Patwalia, the amicus curiae appearing in the case, objected to this Court making a pronouncement of this question which is argued for the first time in review even though it is not pleaded in the review petition as a ground for review.

89. This court finds some substance in the said objection. We have already indicated that in the Article 32 petition notice was served on the review petitioner and it was open to him to raise these points in that proceeding as by that time

the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the 2006 amendment Act had come into force.

90. Even though the ambit of the review petition has been widened by this Court in Eswara (supra), it has to follow broadly the principles of review under Order 47 Rule 1 of the Code of Civil Procedure.

91. Following the discipline of Order 47, Rule 1 or the concept of "an error apparent on the face of the record", we possibly cannot pronounce in a review petition on a question, which was open to be raised in the original proceeding, but was not raised. That apart, it has not at all been pleaded in the review petition. For these reasons, this Court refrains itself from pronouncing on the rights of the petitioner under Juvenile Justice (Care and Protection) Act, 2000 as amended by the 2006 Amendment. If he is so advised, it is open to the petitioner to agitate on his rights under the said Act before the appropriate Forum and in appropriate proceedings.

92. If such a proceeding is initiated by the petitioner, the same will be dealt with without being impeded by any observation made or finding reached in any of the judgments arising out of the concerned criminal case against the petitioner, by any Court, including this Court.

7. It was thereafter that the above referred application was filed by the applicant before the Board on 22.12.2010 seeking in particular, the following reliefs:

(a) Applicant's age be re-determined in accordance with the provisions of Rule 12 of the Model Rules, 2007;

(b) Applicant be released forthwith as per the provisions of Section 64 of the JJA 2000/06 r/w Rule 98 of the Model Rules 2007 having spent more than 18 years in prison for an offence committed during the juvenility;

(c) The records of his conviction be removed in terms of Section 19(2) of the JJA 2000/06.

(d) Any other order in the interest of applicant, as this Hon.ble Board may deem fit and appropriate in the circumstances of this case.

8. The records of the proceedings before the Board reveal that on receipt of this application, it called for the trial courts records from the office of the learned District & Sessions Judge, Morigaon which were received eventually on 21.2.2011. On the next date i.e. 23.2.11, the Board made the preliminary scrutiny of the said records and on the prayer made by the learned counsel for the applicant to get themselves adequately acquainted with the records, the hearing was adjourned till 11.3.2011. The arguments were heard on that day and the Board by its order dated 23.3.11 on a consideration of the materials available and the submissions made observed that a fresh medical opinion of a duly constituted Board for determination of the present age of the applicant was necessary in order to ascertain his age on the date of the occurrence. The

Superintendent of Gauhati Medical College Hospital was thereby directed to constitute a Medical Board under Rule 12(b) of the Rules consisting of three doctors to examine the applicant lodged in the Central Jail, Jorhat to opine on his age as on the date of his examination. A time frame of 15 days was fixed for the purpose. The records reveal that the applicant was medically examined on 30.5.2011 by a Medical Board of the Gauhati Medical College Hospital duly constituted for the purpose. Meanwhile, the Principal Member, Juvenile Justice Board, Morigaon having been transferred though the medical report was duly received by the Board, the proceedings before it could not be furthered. The Board at present is non-functional for all intents and purposes though steps are afoot to restore its function. It is, in this background, that the application filed before the Board along with the records are before this Court in the instant proceeding.

9. It having been referred additionally in the letter dated 3.7.2011 aforementioned, that in spite of strong recommendation of the Parole Board for the release of the applicant under the Assam Prisons Rules, 1968, the concerned authorities empowered to take a decision thereon had remained inexplicably inert, this Court by its order dated 19.7.2011 requested the learned Govt. Advocate, Assam to obtain instructions in this regard. On 21.7.2011 Mr Deka produced a letter being No. NHMB. 165/2006/PM/6 dated 20.7.2011 of the Joint Secretary to the Govt. of Assam, Home Department to the effect that the Inspector General of Prisons, Assam vide his letter No. PRI-74/2008/50 dated 16.3.2011 had forwarded a proposal to the Home (B) Department along with his recommendation for the final release of the applicant. The letter reveals that the said proposal and the concerned file had thereafter been endorsed to the Judicial Department of the State on 29.4.11 for its views. Subsequent thereto, the Additional Advocate General, Assam on being requested by this Court for his intervention to expedite this process, produced a copy of the letter No. JDJ 225/2011/6 dated 27.7.2011 of the Deputy L.R. & Deputy Secretary to the Govt. of Assam, Judicial Department conveying the view of his department rejecting the proposal for the release of the applicant.

10. The learned Amicus Curiae has pleaded that in the factual backdrop in which the instant proceeding has been initiated, this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India is empowered to adjudicate on the application filed on behalf of the accused applicant. Mr Mishra with reference to Section 6(2) of the Act in particular, submitted that in terms thereof this Court was equipped with the powers conferred on the Board by or under the Act considering the nature of the proceeding in hand. With profuse reference to sections 2(k) and 2(1) defining "juvenile" or "child" as well as "juvenile in conflict with law" respectively as well as section 7A, the learned Amicus Curiae has maintained that it is open for this Court to examine the claim of juvenility raised on behalf of the accused applicant. Relying on sections 20 and 64 of the Act, Mr Mishra contended that the provisions thereof are applicable in the facts in hand and that the issue of juvenility ought to be decided in terms of

the provisions thereof. This, he contended in particular to underline the applicability of the provisions of the Act even in a situation where the proceeding leading to the conviction of a juvenile had culminated finally and he/ she has been undergoing sentence at the time of commencement of the Act. Mr Mishra to buttress this proposition also referred to Rule 98 of the Rules. In any view of the matter, the application having been filed to avail the liberty granted by the Hon.ble Apex Court, the issue raised thereunder ought to be examined as per the provisions of the Act, he maintained. Referring to Rule 12 of the Rules, the learned Amicus Curiae argued that though the medical opinion contained in the certificate dated 23.12.1997 (exhibited as Ext.-C at the trial in Sessions Case No. 31(M)/93) suggests that the accused applicant was aged less than 18 years on the date of the commission of the offence, the medical certificate dated 30.5.2011 issued in terms of the order dated 23.3.2011 of the Board demonstrates to the contrary. In terms of the latter certificate, according to Mr. Mishra, even if maximum benefit as contemplated in Rule 12(3) (b) is accorded, the accused applicant can not be considered to be a juvenile under the Act on the date of the offence. However, the medical certificate dated 23.12.97 as well as the transfer certificate (Ext-Ka) and the evidence of the father of the accused applicant taken together, he can be adjudged to be a juvenile under the Act. Mr Mishra sought to consolidate his arguments by placing reliance on the decisions of the Apex Court in Mohan Mali and Another Vs. State of M.P., and Daya Nand v. State of Haryana, (2001) 2 SCC 224.

11. While, the learned State counsel abided by the stand taken by the Judicial Department of the State against the release of the accused applicant on the remission of the remainder of the sentence, Mr Das has insistently urged with reference to the averments made in the application that the prayer for redetermination of the age of the accused applicant did not contemplate his re-examination by a new Medical Board. According to him, the Juvenile Justice Board, Morigaon misread the application and misconstrued the liberty granted by the Hon.ble Apex Court in ordering re-examination of the applicant by a fresh Medical Board for determination of his age. Mr Das has maintained that in absence of any reason recorded by the learned Board as to the unreliability of the medical certificate/ report submitted at the trial, its decision to seek a fresh medical opinion is unsustainable in law and on facts. Referring to the medical certificate dated 30.5.2011, Mr Das has urged that notwithstanding the very wide range of age limits as mentioned therein in terms of Rule 12(3) (b), the age of the accused applicant ought to be determined as 30 years on the date of his reexamination. In the alternative, he has argued that having regard to the age of the accused applicant as suggested by the medical certificate dated 23.12.1997, he can safely be held to be 33 years at the maximum on 30.5.11. Mr Das emphasized on the duty of the Court, Board and other authorities as contemplated by the Act and the Rules to ascertain the age of a person claimed to be a juvenile in deference to the letter and spirit of the provisions thereof. The learned counsel has placed reliance on the excerpts from several authoritative

texts on medical jurisprudence to underline that the determination of age of a person above 20 years cannot be effected in an accurate manner rendering it unreliable. He also placed reliance on the decisions of the Apex Court in *Rajinder Chandra Vs. State of Chhattisgarh* and *Another*, and also of this Court in *Nabam Amas Vs. State of Arunachal Pradesh*, and *Binoy Biswas v. State of Assam* passed in Crl. Appeal (J) No. 2/2005 to buttress his contentions.

12. We have lent our anxious consideration to the pleaded facts, records/documents laid before us and the authorities cited for elucidation of the propositions advanced. The preamble of the Act introduces the legislation to be one to consolidate and amend the law relating to juveniles in conflict with law by adopting a child-friendly approach in the adjudication for the best interest of the children and for their ultimate rehabilitation. This Act replaces the Juvenile Justice Act, 1986 with the definition of "juvenile" or "child" u/s 2(k) to mean a person who has not completed eighteenth year of age. "Juvenile in conflict with law" is defined in section 2(1) to mean a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. A Juvenile Justice Board is contemplated u/s 4 which prescribes as well the composition thereof. This statutory body has been empowered to exercise the powers and to discharge the duties in relation to juveniles in conflict with law under the Act. u/s 6(2), the powers conferred on the Board by or under the Act are exercisable by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

Section 7A makes it obligatory for the court before which a claim of juvenility is raised to make an inquiry, take such evidence as may be necessary so as to determine the age of such person and record a finding as to whether he/she is a juvenile or a child or not and state his/her age as nearly as may be. That a claim of juvenility may be raised before any court even after the final disposal of the case and that in such an eventuality, the claim has to be determined in terms of the provisions of the Act and the Rules made thereunder, even if, the juvenile has ceased to be so on or before the date of the commencement thereof, is clearly stipulated in the proviso to section 7A. Section 7A(2) mandates that if a court finds a person to be juvenile on the date of the commission of the offence under sub-section(1), it would 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 20 in clear terms makes the provisions of the Act applicable to the cases pending on the date of its commencement. The Explanation incorporated in this section ordains that in all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law in any court, the determination of juvenility has to be in terms of section 2(1), even if a juvenile has ceased to be so on or before the date of commencement of the Act and the provisions thereof would apply as if it had been in force for all purposes

at all material times when the alleged offence had been committed.

Under section 49, the competent authority as defined in Section 2(g) is to make due enquiry as to the age of a person brought before it, if he/she appears to be a juvenile or a child and for that purpose, take such evidence as may be necessary and record a finding whether the person is a juvenile or child or not and state his age as nearly as may be.

Section 64 which deals with juvenile in conflict with law undergoing sentence at the commencement of the Act i.e. 1.4.2001, enjoins that the State Government shall direct such juvenile in lieu of undergoing such sentence be sent to special home or be kept in a fit institution in such manner as it would think fit for the remainder of the period of the sentence and that the provisions of the Act would apply to him/her as if he/she had been ordered by the Board to be sent to such special home or institution or as the case may be ordered to be kept under protective care u/s 16(2) of the Act. The Explanation to this section clarifies in clear terms that in all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of the commencement of the Act, his/her case including the issue of juvenility should be decided in terms of section 2(1) and other provisions of the Act and the Rules made thereunder irrespective of the fact that he/she had ceased to be a juvenile on or before such date and be sent to the special home or a fit institution as the case may be for the remainder of the period of the sentence subject to the maximum term as provided in Section 15.

13. Rules not having been framed by the Government of Assam, the model Rules i.e. Juvenile Justice (Care and Protection of Children) Rules, 2007 framed by the Central Government, in terms of the proviso to Rule 68 would apply.

Rule 12 which delineates the procedure to be followed in the determination of age of a child or a juvenile in conflict with law is of utmost significance for the issues in hand. Rule 12(2) stipulates that a court or a Board or a Committee as the case may be, 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 the physical appearance or documents, if available. Sub rule (3) ordains that the age determination enquiry shall be conducted by the court or the Board or the Committee by seeking evidence in the form of :-

(i) the matriculation or equivalent certificates, if available; and in the absence thereof;

(ii) the date of birth certificate from the school (other than a play school) first attended, and in the absence thereof;

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

14. Rule 12(3) (b) requires that only in the absence of any of the above forms of evidence/proof, medical opinion would be sought from a duly constituted Medical

Board which will declare the age of the juvenile or the child. It is provided as well that in case the exact assessment cannot be done, the Court or the Board or as the case be, the Committee, for reasons to be recorded by them, may, if considered necessary, give benefit to the child or the juvenile by considering his/her age on lower side within the margin of one year.

The finding in respect of the age in the manner so indicated would be the conclusive proof thereof as regards the child or the juvenile in conflict with law. Whereas sub-rule(4) makes it incumbent on the court or the Board or the Committee as the case may be to pass an order in writing stating the age and declaring the status of juvenility or otherwise, sub-rule(5) bars further inquiry in this regard save and except where the same is required inter alia in terms of sections 7A and 69 and the Rules. Under Rule 98, the State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 and pass appropriate orders in the interest of the juvenile in conflict with law u/s 64 of the Act for his immediate release if his period of detention/imprisonment has exceeded the maximum period provided in section 15.

15. A conjoint reading of the provisions of the Act and the Rules recited hereinabove evinces a solemn statutory duty of a Court, a Board, a Child Welfare Committee or the competent authority as the case may be to examine the issue of juvenility of a person claiming to be a child or a juvenile in conflict with law on the date of commission of an offence and ascertain his/her age by taking such evidence as may be considered necessary and thereafter pass appropriate orders or issue necessary directions as enjoined by the Act and/or the Rules. That the provisions of the Act and the Rules, bearing on the aspect of juvenility are applicable to a person who is a juvenile in conflict with law as defined, even if he/she has ceased to be so on or before the date of commencement of the Act i.e. 1.4.2001 is not only patent on the face thereof, but also is no longer res integra in view of the decision of the Apex Court in Hari Ram Vs. State of Rajasthan and Another, . The legislative concern to obviate any possible denial of the beneficial provisions of the Act to a "child" or a "juvenile" or a "juvenile in conflict with law" manifests itself in particular in Sections 7A, 20, 49 and 64 of the Act as well as Rules 12 and 98 of the Rules so much so, that not only his/her case including the issue of juvenility has to be obligatorily and expeditiously inquired into and adjudicated upon in the manner prescribed at any stage either before or during the pendency or after the final disposal of the proceeding in which he/she might be or has been awarded any sentence on his/her conviction on a criminal offence, but also if he or she had been undergoing the sentence at the time of commencement of the Act. The abiding anxiety of the legislature to secure a child-benign orientation of the institutions so contemplated pervades the gossamer of the enactment making it mandatorily incumbent on their part to devotedly address themselves amongst others to the issue of juvenility, the very quintessence and the foundation of the consequential benefits designed by the

Act.

16. That section 7A would have to be read in tandem with section 20 of the Act and Rule 98 of the Rules has been authoritatively propounded in Hari Ram(supra). Their Lordships in this rendering succinctly encompassed the pith of the Act in the following paragraphs

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), &-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

67. Section 7-A of the Juvenile Justice Act, 2000, made provisions for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause(1) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

17. Judged on this philosophy of the Act and the Rules as well as the backdrop of facts in which the instant proceeding has been initiated, it is considered imperative to exercise this Courts writ jurisdiction to examine the aspect of juvenility of the accused applicant Ramdeo Chouhan @ Rajnath Chouhan, more particularly in view of the liberty granted to him by the Apex Court in its judgment and order dated 19.11.2000 in Review petition (C) 1378/2009 arising out of Writ Petition (C) No. 457/2005 and availed of by him.

18. Reading between the lines, it does not transpire from the relevant excerpts of the aforementioned order of the Apex Court in Review Petition (Civil) No. 1378/09 that any need due to the appreciable time lag, for a fresh evidence in the matter of determination of the age of the accused applicant was indicated while deciding on his rights under the Act if agitated by him before the

appropriate forum. On the other hand, their Lordships in clear terms clarified that if such a proceeding was initiated by the accused applicant, the same would be dealt with without being impeded by any observation made or finding reached in any of the judgments arising out of the concerned criminal case against him by any court, including the Apex Court. It was thus clearly not the edict of the Hon.ble Apex court for the appropriate forum if approached by the accused applicant to record or insist for fresh evidence to determine the issue of juvenility. Instead, it was open for the forum so approached to consider afresh the relevant materials already on record more particularly in the changed legal perspectives with the advent of the Act (with its amendment in the year 2006) as well as the Rules.

19. The accused applicant as well, as the application filed before the Board would reveal, had in categorical terms, insisted for the determination of his age for deciding the issue of juvenility on the basis of the medical certificate already on record and asserted against adduction of any fresh evidence.

20. The Juvenile Justice Board, Morigaon, as alluded hereinbefore however, by its order dated 23.3.2011, while taking note of the documents including the medical certificate dated 23.12.1997 already on record and observing that no other document contemplated in Rule 12(3)(a) (i)(ii)(iii) was at the disposal of the accused applicant, construed it to be necessary to seek a fresh medical opinion from a duly constituted Medical Board for determination of his present age in order to ascertain his age on the date of the occurrence.

Evidently, the Board did not reject the medical certificate along with the evidence of Dr. Bhusan Chandra Roy Medhi who as a member of a duly constituted Medical Board which had examined the accused applicant on 23.12.1997 to ascertain his age being referred to for the said purpose by the learned trial court. Having regard to the proximity of the dates of the occurrence (8.3.1992) and the medical examination of the accused applicant (23.12.1997) as well as the testimony of the concerned doctor recorded by the learned trial court, we are unable, in the facts and circumstances of the case, to approve this initiative on the part of the Board to obtain a fresh medical evidence on the accused applicants physical examination after 14 years and that too without recording any reason in support thereof. This is more so, in view of the consistent opinion expressed by several experts on the subject to the effect that as a safe practice, no specific or dogmatic opinion as to approximate age can be given after 20 years.

In the treatise "Forensic Medicine for Lawyers" by J.K. Mason it has been observed that upto the age of 20, the most useful information on age is given by the joining of the epiphyses to their shafts, but in adults, after the age of 20, the aging of an unknown body becomes progressively more difficult.

Identically, in Medical Jurisprudence and Toxicology by H W V Cox, it has been propounded that the "ossification test" refers to radiographic (X-ray)

examination of the bones of children and young people upto about the age of 20 and there is a general progression of such appearance and fusion, so that an approximate timetable can be constructed upto about the age of 20.

In view of such preponderant and overwhelming medical opinion, the finding recorded on the physical examination of the accused applicant on 23.12.1997 in absence of convincing and persuasive reason to the contrary ought not to be either discarded or superseded.

21. A plain reading of the report of the age estimation of the accused applicant based on his physical examination on 23.12.1997 demonstrates the opinion of the Medical Board that his age on that date was above 20 years. This document which was introduced in evidence as Ext.-C discloses that the accused applicant had been subjected inter alia to radiological investigation and that the ultimate finding with regard to his age was based thereon.

22. Dr Bhusan Chandra Roy Medhi, the member of the Medical Board conducting the physical examination of the accused applicant, in his testimony on oath at the trial as C W -1 supported the findings, proved the report as well as his signature thereon and clarified that the age of the accused applicant could not be more than 21 years on the date of the examination. He, in his cross examination denied the suggestion that the accused applicant had by then attained the age of 25 years. He however insisted that his age could not be below 20 years, but could at the most exceed by one year. On the basis of the medical report and the testimony supporting the same, it would thus be apparent that the accused applicant on the date of the occurrence i.e. 8.3.1992 was aged between 15-16 years. Understandably, the learned trial court answered the claim of juvenility in the negative with reference to the provisions of the Juvenile Justice Act, 1986 then in force.

23. The medical opinion contained in the report based on the physical examination of the accused applicant on 30.5.2011 reveals fresh radiological investigation and is to the effect that he was aged between 30-40 years on that date. Apart from the reasons cited hereinabove in disapproval of a fresh medical opinion, we are constrained to observe that the abovementioned age limits encompassing a time range of 10 years is too indeterminate and ambivalent to decisively arrive at the correct age of the person concerned. Noticeably, the two extremes mentioned in this report logically includes the age otherwise ascertainable with reasonable precision from the medical report dated 23.12.1997 supported by the oral testimony of the doctor who was a member of the Board conducting the same. To this extent, the fresh report also substantiates the earlier one.

24. At the trial, as the records reveal, the father of the accused applicant Firato Chouhan had examined himself on oath to state that he (accused applicant) was born in the year 1977 and that he studied in Mailo Hindi High School, Karbi Anglong. He also proved the transfer certificate (Ext-Ka.) issued by the said

school which inter alia recorded his date of birth to be 1.2.1977. The defence had also examined Satya Narayan Yadav, the Headmaster of the abovenamed school who confirmed that the accused applicant had studied thereat and also proved the admission register (Ext..Kha.) with the relevant page [Ext. Kha(2)] and the entry [Ext., Kha(3)] in proof of the enrolment of the accused applicant as a student in the said school with his date of birth recorded therein to be 1.2.1977. These oral and documentary evidence on a cumulative consideration also endorse the medical opinion expressed in the report dated 23.12.1997 and the testimony of Dr Bhusan Chandra Roy Medhi.

As a matter of fact, in terms of Rule 12(3)(a), since none of the categories of evidence contemplated in clause (i),(ii) and (iii) is available, the age of the accused applicant has to be essentially and primarily determined on the basis of the medical opinion as ordained by Rule 13(3)(b). The oral testimony of the father of the accused applicant and the Headmaster of the school where he claimed to have studied with reference to the documents proved by them as well as the documents proved by them is nevertheless corroborative relevance.

25. The Apex court in *Arnit Das Vs. State of Bihar*, had held that while dealing with the question of determining the age of a person 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 in support of the plea of juvenility and if two views may be possible on the said evidence, the court should lean in favour of holding him to be a juvenile in borderline cases. This view was affirmed by the Apex court in *Rajinder Chandra V. State of Chhattisgarh & Anr. Appeal (Crl) 113/2002* decided on 24.1.2002. That a duty is cast on the court to exhaust the methods of determination of age as provided by the Act and the Rules framed thereunder in respect of the claim of juvenility if raised, was echoed by this Court in *Nabam Amas (supra)*. 26. Thus, on a rational and judicious assessment of the evidence available on record as well as the authorities cited at the Bar, we are of the unhesitant opinion that the accused applicant was a juvenile as defined in Section 2(k) of the Act on the date of the commission of the offence i.e. 8.3.1992 and is thus entitled to be treated as a juvenile in conflict with law vis-a-vis the charges and was entitled at all relevant points of time to be dealt with as such.

27. It is thus axiomatic in view of the provisions of the Act and the Rules more particularly, Sections 7A and 15 thereof that the trial, conviction and sentence of the accused appellant in Sessions Case No. 31(M)/1993 has to be adjudged as non est in law. Ordered accordingly.

28. The applicant as on date is in detention for a period (more than 18 years) much in excess of the maximum period for which he could have been sent to a special home u/s 15 i.e. three years even on his conviction on the said charges by the Board. He is thus entitled to be set at liberty. Our conclusion stands reinforced amongst others by the renderings of the Hon.ble Apex court in *Mohan Mali and anr (Supra)* as well as of this Court in *Benoy Biswas v. State of Assam* in

Criminal Appeal (J) No. 2/2005 disposed of on 1.2.2011.

29. It is thus ordered that Ramdeo Chouhan @ Rajnath Chouhan, the applicant herein, be released forthwith from custody. The Registry would take immediate steps for the implementation of this order. Before we part, we record our deep appreciation for the valuable assistance rendered by Mr DK Mishra, Senior Advocate, as Amicus Curiae.

30. The instant petition is answered accordingly. In view of the protracted litigational background, we refrain from passing orders on costs.