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**(2013) 12 CAL CK 0038**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 3741 of 2013**

Swapan Roy

APPELLANT

Vs

C.B.I.

RESPONDENT

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**Date of Decision :** 11-12-2013

**Acts Referred:**

**Citation :** (2014) 1 CALLT 434 : (2014) CriLJ 1907 : (2014) 2 RCR(Criminal) 793

**Hon'ble Judges :** Joymalya Bagchi, J

**Bench :** Single Bench

**Advocate :** Milan Mukherjee and Mr. Biswajit Manna, for the Appellant;  
Himangshu De and Mr. Mrityunjay Chatterjee, for the Respondent

**Final Decision :** Allowed

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## Judgement

Joymalya Bagchi, J.—Order dated 30.09.2013 passed by the learned Additional Sessions Judge, Redesignated Court, Paschim Midnapore arising out of Case No. R.C. 3(5) 2011, Kolkata rejecting the prayer of the petitioner to declare him a juvenile in conflict with law has been challenged. Petitioner who was arrested in the instant case claims that he was born on 14.06.1994 and accordingly was below 18 years of age on the date of occurrence i.e. 07.01.2011.

2. The prosecution case, as alleged, against the petitioner is to the effect as follows:

Towards the end of 2009, CPI (M), a political party, had set up camps in different parts of Paschim Midnapore District on the pretext of providing shelter to their activists/supporters who had fled away from their homes owing to threats by Maoist and PCPA activists. In the year 2010, Abani Bhushan Singha (A-1), Subhendu Mondal (A-2), Tapan Dey (A-3), Aswini Chalak (A-4), Joydev Giri (A-5), Fullara Mondal (A-6), Rathi Dandapath (A-7), Naba Gopal Sanki (A-8), Chandi Karan (A-9), Md. Khaliluddin (A-10), Anuj Pandey (A-19), Dalim Pandey (A-20), all being activists of CPI (M) party, entered into a criminal conspiracy and pursuant to such conspiracy set up a camp at the residence of Rathin Dandapat

(A-7), another activist of CPI (M) party at Netai, Paschim Midnapore and a number of armed persons were deployed for guarding the said camp. None of the villagers were aware of the identities of the said armed persons. However, in the course of investigation it was found that the said individuals had been recruited from the neighbouring villages of Peruabad and Murar and were trained and deployed with arms to guard the said camp. It is further alleged that another such illegal camp was set up at village Birkard by Chandi Karan (A-9), an activist of CPI (M) party by forcibly occupying the house of one Indrajit Das and arrangements were made for the stay of a number of armed persons thereby. Abani Bhusan Singha (A-1), Subhendu Mondal (A-2) and Naba Gopal Sanki (A-8) used to stay at the said camp at Netai. After the said camps were set up at Netai, local villagers were compelled to do household work at such camps and also to guard the camps during night. Pursuant to the conspiracy, Abani Bhusan Singha (A-1), Subhendu Mondal (A-2) and Aswini Chalak (A-4) also compelled the villagers to undergo arms training. As a result, local villagers were made to undergo rigorous training on 06.10.2011. Having undergone said training, a number of villagers fell sick. In spite of the same, they were insisted upon to attend arms training on 07.01.2011. Local villagers protested against the said illegal training and assembled in front of the camp at Netai on 07.01.2011 in the morning. They conveyed their unwillingness to Abani Bhusan Singha (A-1), who in turn responded to the villagers and intimated them that he would bring the issue to the knowledge of senior formation of his party and decision of the senior formation would be communicated to the villagers. While villagers were waiting in front of the camp for such decision of the senior formation of CPI (M) party with regard to the forced and illegal arms training, the armed personnel of Birkard camp approached towards Netai and fired bullets in the air to scare away the assembled agitating villagers. On hearing the said bullet sounds from the roof top, firing was made initially in the air from the camp at Netai and in spite of such firing when the mob did not disperse, indiscriminating firing was made at the mob by Pintu Roy (A-11), Swapan Roy (A-12) the petitioner herein, Gandib Ban Roy (A-13), Raju Roy (A-14), Lob Duley (A-15), Banamali Duley (A-16), Niranjana Kotal (A-17), Rupchand Ahir (A-18) and other persons which caused death of 9 villagers and injury to a large number of them.

3. Investigation in the instant case was initially taken up by the CID, West Bengal. Pursuant to order passed by this Court in writ jurisdiction the investigation was transferred to the CBI. In conclusion of investigation, charge sheet was filed in the instant case against the petitioner and 19 others under sections 120B, 148, 149, 326, 307, 302, 374 of the I.P.C. and under sections 25 and 27 of the Arms Act showing accused Tapan Dey (A-3), Joydev Giri (A-5), Fullara Mondal (A-6), Chandi Karan (A-9), Md. Khaliluddin (A-10), Anuj Pandey (A-19) and Dalim Pandey (A-20) as absconders.

4. The case was committed to the Court of Sessions, Paschim Midnapore and transferred to the Court of learned Additional Sessions Judge, Redesignated Court, Paschim Midnapore. Pursuant to a notification published on 17.08.2011

prayer was made on behalf of the CBI for transfer of the case to learned Special Judge, CBI Court -I, Bichar Bhawan, Kolkata. Such prayer was initially allowed by this Court vide order dated 19.06.2012 in C.R.R. No. 2077 of 2012 and the case was transferred to the file of the learned Special Judge, CBI Court -I, Bichar Bhawan, Kolkata. Before the said court, prayer was made claiming that the petitioner and one Raju Roy were juvenile. By order dated 29.09.2012 learned Special Judge, CBI Court -I, Bichar Bhawan, Kolkata turned down such prayer. The said order has been assailed in C.R.R. No. 3324 of 2012 which has been rendered infructuous in view of the subsequent developments which are narrated hereinbelow.

5. By order dated 13.03.2013 a learned Single Judge of this Court in W.P. No. 17940 (W) of 2012 quashed the aforesaid notification and directed retransfer of the case to the file of the learned Additional Sessions Judge, Redesignated Court, Paschim Midnapore. Pursuant thereto, the case was retransferred to the court of the learned Additional Sessions Judge, Redesignated Court, Paschim Midnapore.

6. Fresh prayer was made before the learned Additional Sessions Judge, Redesignated Court, Paschim Midnapore for determination of the claim of juvenility of the petitioner and co-accused Raju Roy. By the impugned order dated 06.06.2013 the prayer of the petitioner was turned down on the basis of the ossification report which showed the petitioner to be 20-21 years of age on the date of examination i.e. 07.07.2012 and also on the ground that the petitioner's parents had not been examined to prove his age. Such order was challenged before this court in C.R.R. No. 2106 of 2013.

7. In C.R.R. No. 2106 of 2013 this Court by order dated 26.07.2013 set aside the aforesaid order and granted liberty to the petitioner to examine his parents as witnesses and/or lead any other or further evidence in accordance with law. Learned trial Judge was directed to examine such additional evidence along with all other evidences on record and come to a finding as to the age of the petitioner.

8. Pursuant to the said order, parents of the petitioner, namely, Bijay Roy (P.W.-3), Chaya Roy (P.W.-4) and his maternal uncle Mrintunjoy Roy (PW5) have been examined and cross-examined. Learned trial Judge after analysis of the aforesaid evidence on record by the impugned order dated 30.09.2013 rejected the version of the petitioner that he was born on 14.06.1994 and was a juvenile at the time of commission of the offence. Hence, this present petition.

9. Mr. Mukherjee, learned senior counsel appearing for the petitioner criticised the impugned order and submitted that the learned Judge failed to determine the age of the petitioner in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (hereinafter referred to as the Rules of 2007). He further submitted that the learned Judge disbelieved the evidence of the parents and the maternal uncle of the petitioner on flimsy grounds and discarded the admission register on irrelevant consideration. In this regard he relied on

Ashwani Kumar Saxena Vs. State of M.P., He submitted that it has been held in Hari Ram Vs. State of Rajasthan and Another, that Rule 12 of the Rules of 2007 is mandatory in the matter of determination of age of a juvenile under the Act of 2000 and the learned Judge has erred in law in failing to follow the aforesaid proposition. He also relied on Jarnail Singh Vs. State of Haryana, , Shah Nawaz Vs. State of U.P. and Another, Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, in support of his contention. He also submitted that the learned Judge erred in law by giving preference to the medical determination of age of the petitioner without paying heed to the preferential categorisation provided in the aforesaid Rule 12 of the Rules of 2007. He further submitted that the learned Judge erred in law by holding that the medical opinion relating to the age of the petitioner is perfect and not subject to variation of two years on either side as held by the Apex Court in the case of Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others,

10. Mr. De, learned senior counsel appearing for the CBI submitted that the petitioner is not a juvenile in conflict with law and that the learned Judge rightly rejected his prayer by disbelieving the admission register which suffered from various discrepancies. He also submitted that the version of the parents and other relatives of the petitioner relating to the age also did not inspire confidence and the learned Judge accordingly relied on ossification report to come to a finding that the petitioner was above 18 years on the date of the alleged incident. He accordingly prayed for dismissal of the application. He relied on Shah Nawaz Vs. State of U.P. and Another, and Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal,

11. I have perused the materials on record. It appears from the impugned order that the evidence of the parents being PW 3 & 4 was disbelieved on the ground that they could not state the exact date of birth of their daughter although they could state that of their son, that is the petitioner. Their explanation, that they remembered the date of birth of their son as they celebrated such occasion, was disbelieved, on the score that the son resided with the maternal uncle (PW 5) and that no such celebration was held for their daughter. I am of the opinion that the evidence of the parents (PW 3 and 4) have a ring of truth about itself. Both P.W. 3 and P.W. 4 have unequivocally stated that their daughter was born in 1992 and that the son was born on 14.06.1994. P.W. 4 has stated that they recollect the date of birth of the son as his birth was celebrated. It is highly probable bearing in mind their poorly educated rural background that the birth day of the male child was celebrated whereas there was no celebration in respect of the female child owing to lack of gender sensitivity in such matters. Moreover, on such special occasions it is quite likely that the petitioner visited his residence though he ordinarily resided with his maternal uncle (PW 5) to pursue his education. Hence, to reject the consistent version of P.W. 3, P.W. 4 and P.W. 5 with regard to the date of birth of the petitioner on such issues is not only unrealistic but contrary to the common course of natural events and the broad improbabilities in the case. P.W. 5, the maternal uncle of the petitioner, stated on

his deposition that he admitted the petitioner to the school and the entry in the admission register was made as per his version. Such evidence of P.W. 5 has been discarded on the ground of non-production of admission form claimed to be filled up by him and due to absence of his signature on the admission register although he claimed to have signed it. I find that the evidence of P.W. 5 that he admitted the petitioner to the concerned school has remained unchallenged. The date of birth stated by him on oath also corroborates the entry of the admission register. No material has been produced before this Court to establish that it was incumbent on the guardian/parent of a student to sign in the admission register of the school to certify the correctness of any entry made therein in respect of such student. In the absence of any such prevalent rule, the discrepancy as to whether PW 5 put his signature or not in the admission register cannot be a relevant consideration to reject his evidence. A copy of such admission duly attested by the SI of school of the concerned circle has also been exhibited. Rule 12(3)(ii) of the Rules of 2007 necessitates the production of an age certificate of the person claiming to be a juvenile in conflict of law from the educational institution where he first attended and nothing more. Hence, non-production of admission form, as the same had not been preserved as per the version of PW 1, can be said to be contrary to Rule 12(3)(ii) of the Rules of 2007 and is a good ground to disbelieve the version of PW 5. The admission register of the school has been produced and proved by PW 1. He has also proved the age certificate of the petitioner issued in terms of such admission register. He has deposed that the admission register has been maintained at the school in the ordinary course of business and from 2000 to 2010. The name of the petitioner appears in serial No. 3 of the year 2006 of such register. The admission register has not been believed on the ground that there is one signature of the then head teacher of the institution in the page containing the entry relating to the petitioner whereas there are signatures against each entry in the next page and that the register does not bear the seal of the school. The admission register in the form of a book was kept by the school in the ordinary course of business from 2000 till 2010. It is an official record where entries have been made by the school authorities in discharge of their official duty. Each page of such book contains the signature of the then head of the institution including the page which had the relevant entry. There is no overwriting/erasing in respect of the entry. Learned Judge lost sight of the fact that the incident occurred in 2011 whereas the relevant entry was made in 2006 in the register containing running pages maintained by the institution in ordinary course of business from 2000 to 2010. It is highly unlikely, if not impossible, that such entry could be fraudulently incorporated subsequently in the running pages of an official register maintained by the institution continuously from a decade prior to the incident. Moreover, a photocopy of the said register duly attested by the SI of schools of the concerned circle has also been exhibited.

12. Hence it cannot be said that the admission register exhibited in the instant case is a manufactured or fabricated document. It was prepared and maintained,

prior to the alleged incident, as an official record for a decade from 2000 to 2010 in discharge of official duty, photocopy whereof is attested by an independent public servant unattached to the affairs of the school. The evidence of the parents (PW 3 and 4) and, most importantly, that of PW 5 (maternal uncle) who supplied the information relating to the date of birth of the petitioner to the school authorities is corroborated by such entry in the school register. Learned Judge illegally rejected such consistent evidence on record relating to the age of the petitioner which ought to be given precedence over other materials on record in view of Rule 12 of the Rules of 2007.

13. Rule 12 of the Rules of 2007 lay down procedure in which the age of a juvenile in conflict with law is to be determined under the Act. Rule 12 reads as follows:

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, 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 appearances 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.

14. In Hari Ram Vs. State of Rajasthan and Another, the Apex Court had the occasion of interpreting Rule 12 and held that only in the absence of documents referred to in Clause (b) of Rule 12 sub-rule (3), medical opinion from a duly constituted medical board may be considered for determination of age of a juvenile in conflict with law. The Apex Court held as follows:

55. Sub-rule (3) of Rule 12 indicates that the age determination inquiry by the Court or Board, by seeking evidence, is to be derived from:

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

(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;

56. Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted Medical Board, which would declare the age of the juvenile or the child. In case exact assessment of the age cannot be done, the Court or the Board or as the case may be, the Child Welfare Committee, for reasons to be recorded by it, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within a margin of one year.

(emphasis supplied)

15. In *Ashwani Kumar Saxena Vs. State of M.P.*, the Apex Court held that the Court/Board shall not go beyond the school certificate kept in normal course of business and examine the correctness of the entries therein. In paragraph 34 of the said report the Apex Court observed as follows:

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

(emphasis supplied)

16. In the instant case the trial Court has in fact done exactly the opposite. It is nobody's case that the admission register exhibited in this case was not kept in the ordinary course of business or was not produced from the school itself. In spite of the same, the Court went into a roving enquiry to examine the correctness of the relevant entry in the admission register. Even in the course of such enquiry, the evidence of PW 5, the source of such information, was rejected on irrelevant and flimsy considerations, namely, non-production of admission form and controversy as to whether PW 5 had signed the register. Rule 12(3)(a) (ii) of the Rules of 2007 does not require the production of admission form in an age determination enquiry. Nor any rule/regulation has been placed before this Court that entries in the admission register is to be countersigned by the parents/guardians of the ward.

17. Another desperate plea was raised by Mr. De, learned senior counsel for the CBI to the effect that the concerned school where the petitioner was admitted to class III was not the educational institution where he first attended. No such case was even made out before the trial Court nor any evidence in support of such contention was ever adduced. No suggestion to that effect was even made to P.Ws. 3, 4 and 5, namely the parents and the maternal uncle of the petitioner denying cross-examination. In the absence of any material on record disputing the fact that the concerned school was not the first educational institution which the petitioner attended, I am unwilling to discard the school certificate/admission register of the concerned school on that score.

18. In *Shah Nawaz Vs. State of U.P. and Another*, the Apex Court in the report quoted an earlier authority with approval and held as follows:--

12. In *Arnit Das Vs. State of Bihar*, 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.

19. The Court interpreted Rule 12 in the following manner:

26. 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.

20. In *Jarnail Singh Vs. State of Haryana*, , the Court extended Rule 12 to determine the age of a victim of crime. Interpreting the preferential treatment regime envisaged in the said Rule, the Court held as follows:

23. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

21. In *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, , the Apex Court dealt with the issue of raising the plea of juvenility at a belated stage of the proceeding including the post-conviction stage in view of section 7-A of the Act. In the said report, the Court reiterated that hyper technical approach should not be resorted to in age determination enquiry under the Act. It held, as follows:

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 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 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.

22. The trial court completely ignored the aforesaid wholesome principle of law and illegally rejected the school certificate/admission register (as proof of age of the petitioner) and relied on medical opinion although such certificate ought to have been given precedence over medical opinion in view of Rule 12, as aforesaid.

23. The trial Court has heavily relied on Shah Nawaz Vs. State of U.P. and Another, in support of its conclusion. In paragraphs 22 and 23 of the said report, the Apex Court observed as follows:

22. 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 for this special protection under the Juvenile Justice 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.

23. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

24. The Court further held as follows:

27. The benefit of the principle of benevolent legislation attached to Juvenile Justice 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. Hence if the plea of juvenility or the fact that he had not attained the age of discretion so as to understand the consequence of his heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage while determining the age of the accused.

25. The facts in *Om Prakash* (supra) are substantially different from the present one. In the said case the accused had raped a minor girl aged about thirteen and half years. The academic records which were relied upon to establish that he was a minor related to one Vijay Kumar whereas in the case records his name appeared as Vijay @ Bhanwar Lal. After analysis of evidence, the Court held that the entry as to date of birth of one Vijay Kumar did not relate to the petitioner who was a different person and accordingly the said academic records were disbelieved.

26. On the other hand, in the instant case the admission register does not suffer from any such discrepancy. It has been produced from the concerned school and duly proved by PW 1. The relevant entry relating to the date of birth of the petitioner is recorded in the year 2006 in the register which is maintained in the form of a book containing running pages from the year 2000 to 2010. Copy of such register is also attested by the appropriate authority. In this factual backdrop, it is patently absurd to suggest that such official record maintained in discharge of official duty is a manufactured, fabricated or manipulated document. More so, the source of information relating to the relevant entry in the aforesaid register has also been proved through the oral version of PW 5, the maternal uncle of the petitioner who admitted the petitioner to the school. His evidence is corroborated by the evidence of PWs 3 and 4 i.e. the parents of the petitioner. The factual matrix in the instant case is clearly distinguishable from that in *Om Prakash* (supra) wherein a dubious entry relating to a different individual was sought to be pressed into service to claim juvenility of the accused. The trial Judge had incorrectly applied the ratio in *Om Prakash* (supra) to the facts of this case which portrays a completely different fact situation.

27. It may be apposite to mention here that in *Salil Bali Vs. Union of India* (UOI) and Another, while upholding the constitutional validity of the Act of 2000, a three Judge Bench of the Apex Court held that the age of a juvenile in conflict with law being fixed at 18 years need not be interfered with on the alleged plea of spate in juvenile crime or on the ground of the extent of majority and understanding of a juvenile in border line cases. The Court held as follows:

58. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of

the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/child including criminal offences.

28. The instant case, no doubt portrays a grave offence where nine persons died. However, to assess the mental maturity of a young offender claiming juvenility relating to the consequences of the crime, not only the gravity but also circumstances leading to his participation must be taken into consideration. In this case, the petitioner hails from an impoverished rural background of scant opportunities and poor empowerment. Taking advantage of his hapless socio-economic conditions, the real players in this malevolent drama (most of whom are absconding) recruited him to be utilised as a "pawn" in their violent turf war.

29. He was a puppet in the hands of his "political masters", perhaps more dispensable in the scheme of things than even the ammunitions used. Can the petitioner, an impressionable teenager of such unfortunate background, in the circumstances as depicted from the prosecution case really be attributed with the requisite maturity to assess the impact of his actions? He is not alleged to have committed the crime out of personal lust, greed or vendetta but as an agent at the hands of most powerful and influential persons, refusal to whose diktat would have spelt doom for him. He is also not an over indulgent youth born in the lap of luxury who has taken the path to crime in gross abuse of such privileged background and audacious disregard to law. Nor is he a hardened mercenary who killed for profit, but a youth allegedly dragged into crime by overwhelming forces taking advantage of his impoverished background and youth.

30. Thakur, J, in the concurring opinion in Abuzer Hossain (supra), lucidly highlighted the close link between poverty and juvenile delinquency and deprecated denial of the beneficial effects of juvenile law to such unfortunate and wayward delinquents. His Lordship eloquently observed as follows:

47. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school. Studies conducted by National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6,122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is

conducted and published by B.N. Mishra in his Book "Juvenile Delinquency and Justice System", in which the author states as follows:

One of the prominent features of a delinquent is poor educational attainment. More than 63 percent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity. Although free education is provided to Scheduled Castes and Scheduled Tribes, even then, the delinquents had a very low level of expectations and aspirations regarding their future which in turn is due to lack of encouragement and unawareness of their parents that they play truant.

(emphasis supplied)

What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative.

31. Applying the said principles to the facts of this case, where a borderline juvenile delinquent is allegedly compelled into crime due to circumstances of poverty and lack of social empowerment at the behest of overpowering malevolent forces beyond his control, denial of the healing balm of juvenile law to him would be a travesty of justice.

32. For the aforesaid reasons, I am persuaded to come to a conclusion that the learned trial Judge failed to consider the evidence on record relating to the age of the petitioner in proper perspective and illegally rejected the most important and relevant evidence in terms of Rule 12 sub-rule (3) of the Rules of 2007, namely, school certificate and admission register of the school where the petitioner first attended and improperly relied on the opinion of the medical expert to come to his finding. The approach of the trial Court was most hyper technical and contrary to the established mode of age determination as laid down in law under the Act of 2000.

33. Accordingly, the impugned order is set aside. The petitioner is declared to be a juvenile in conflict with law. The trial Court is directed to separate his case and forward the same before the concerned Board for disposal in accordance with law.

34. The application is accordingly allowed. Parties are at liberty to act on the copy of this order downloaded from the official web-site of this Court.