

(2014) 11 DEL CK 0265
In the Delhi High Court
Case No : W.P. (Crl.) 1715/2012

Vijay Kumar

APPELLANT

Vs

State of The NCT of Delhi

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 313, 498A

Citation : (2014) 11 DEL CK 0265

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : S.B. Dandapani, Advocate for the Appellant; Dayan Krishnan, Manvi Priya, Advocates and Ashish S. Dalal, SI, P.S. Kapashera, Advocate for the Respondent

Judgement

G.S. Sistani, J.

1. With the consent of counsel for the parties the present writ petition is set down for final hearing and disposal. The necessary facts to be noticed and as stated in the writ petition are that the petitioner stands convicted by a judgment and order on sentence dated 18.8.2003. The petitioner is serving the sentence awarded and has served more than 11 years out of total sentence of life imprisonment. The petitioner has raised a plea of being a juvenile on the date of commission of the offence i.e. 6.10.2001. According to the petitioner, on the date of incident he was 16 year old. In support of his plea of juvenility the petitioner has filed along with this petition a copy of the ration card, which shows his age as 20 years on the date of issuance of the ration card i.e. 14.9.2007. The ration card also contains the age of his parents and other siblings.

2. Counsel for the petitioner has placed reliance on Hari Ram Vs. State of Rajasthan and Another, and more particularly paragraph 18 in support of his argument that a claim of juvenility can be raised before any court at any stage and even after final disposal of case. Counsel for the petitioner further submits that in every case concerning a child or a juvenile in conflict with law, the age

determination enquiry is to be conducted by the court or by the Board, as the case may be, by seeking evidence, by obtaining a matriculation or equivalent certificate and in the absence thereof, the date of birth certificate from a school (other than a play school) first attended, and in the absence whereof date of birth certificate given by a corporation or a municipal authority or a panchayat and in the absence of any of the above documents a medical opinion is to be sought by a duly constituted medical board, as per the provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. Counsel also submits that since the petitioner is not in possession of any of the documents as contained in Rule 12(3)(a)(i)(ii)(iii) of the Juvenile Justice (Care and Protection of Children) Act, 2000, a direction be issued for conducting a medical examination on the petitioner for determination of his age.

4. Learned counsel for the State submits that although the plea of juvenility can be raised at any stage, however, the petitioner must, prima facie, satisfy the Court that he was prevented from sufficient cause from raising the plea of juvenility at an earlier stage and also produce such material before the Court prior to the Court issuing directions for examination before the medical board, which would prima facie show that he was a juvenile on the date of the incident. It is also contended that in the absence of any prima facie material in support of the plea it would be a useless and a futile exercise to order an inquiry in every case where an application is made at a belated stage. It is next submitted that copy of the ration card, which has been placed on record would show that the same was obtained in the year 2007 and thus it cannot be termed as a reliable document, as it is a self-serving document.

5. Learned counsel for the State while relying on Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, has drawn the attention of the Court to paras 26, 28 and 30 in support of his submission that an enquiry cannot be initiated on the basis of a mere assertion of the scheme and it is only after prima facie material is placed on record that the determination may be made in terms of Rule 12.

6. Mr. Dandapani, counsel for the petitioner submits that the Supreme Court has laid down that although no straitjacket formula can be laid out as to what would be termed as sufficient material but it has been observed that the credibility and acceptability of documents like school leaving certificate or voters card obtained after conviction would depend on the facts of each case and no hard and fast rule can be prescribed. An affidavit of any parent or sibling after disposal of the case was also stated to be not sufficient to justify such an inquiry.

7. I have heard counsel for the parties and given my thoughtful consideration to the matter. The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to attend the following objects:

"(i) to lay down the basic principles for administering justice to a juvenile or the child;

- (ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;
- (iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;
- (iv) to prescribe a uniform age of eighteen years for both boys and girls;
- (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;
- (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;
- (vii) to create special juvenile police units with a humane approach through sensitization and training of police personnel;
- (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;
- (ix) to minimize the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts-one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;
- (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child."

8. A person, who has not completed 18 years of age falls within the definition of a juvenile, as per section 2(k) of the Act. Section 2(i) defines a juvenile in conflict with law, as a juvenile who is alleged to have committed an offence. Section 7A of the Act outlines the procedure to be followed when a claim of juvenility is raised. Section 7A reads as under:

"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 order, and the sentence if any, passed by a court shall be deemed to have no effect.

(Emphasis supplied)"

9. It is no longer *res integra* that the plea of juvenility can be raised at any stage, as has been held in the cases [See *Hari Ram Vs. State of Rajasthan and Another*, and *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, .

10. Rule 12 outlines the procedure which is to be followed for determining the age of a juvenile in conflict with law. Rule 12(3) being relevant is reproduced below:

"12. Procedure to be followed in determination of Age-

(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."

11. Admittedly in the present case, the petitioner does not have in his possession the matriculation or equivalent certificate. Neither he has in his possession the date of birth certificate from the school, he first attended, nor he has in his possession the birth certificate given by a corporation or a municipal authority or

Panchayat. In the absence whereof Rule 12(3)(b) provides that opinion of a medical board is to be sought which would declare the age of juvenile.

12. In the present case counsel for the petitioner has placed reliance on copy of the ration card placed on record to show that he was 20 years of age in the year 2007 when ration card was prepared. It is on the basis of this ration card petitioner seeks a direction for holding an enquiry and for constituting a medical board, to assess his age.

13. Counsel for the parties have relied upon various paragraphs of Abuzar Hossain Alias Gulam Hossain (Supra) and I deem it appropriate to reproduce the paragraphs 26, 28, 29, 30, 31, 32, 33, 34, 38, 39, 39.1 to 39.6 of the judgment:

26. Mr. Nagendra Rai, learned senior counsel for the Petitioner in the connected Special Leave Petition being SLP (Criminal) No. 616 of 2012, Ram Sahay Rai v. State of Bihar submitted that by amendment brought in 2006, 2000 Act has been drastically amended. The Legislature by bringing in Section 7A has clearly provided that the claim of juvenility may be raised before any court and it shall be recognised at any stage, even after the final disposal of the case and such claim shall be determined in terms of the provisions contained in 2000 Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the commencement of the Act. He would submit that even if the question of juvenility had not been raised by the juvenile even upto this Court and there is some material to show that a person is a juvenile on the date of commission of crime, it can be recognised at any stage even at the stage of undergoing sentence. He agreed that inquiry cannot be initiated on the basis of mere assertion of the claim. There must be prima facie material to initiate the inquiry and once the prima facie test is satisfied, the determination may be made in terms of Rule 12. With reference to Rule 12, learned senior counsel would submit that appearance, documents and medical evidence are the only materials which are relevant for determining the age and as such only such materials should form the basis for forming an opinion about the prima facie case. The oral evidence should rarely form the basis for initiation of proceeding as in view of Rule 12, the said material can never be used in inquiry and thus forming an opinion on that oral evidence will not serve the purposes of the Act.

28. The amendment in 2000 Act by the Amendment Act, 2006, particularly, introduction of Section 7A and subsequent introduction of Rule 12 in the 2007 Rules, was sequel to the Constitution Bench decision of this Court in Pratap Singh Vs. State of Jharkhand and Another, . In Hari Ram Vs. State of Rajasthan and Another, , a two-Judge Bench of this Court extensively considered the scheme of 2000 Act, as amended by 2006 Amendment Act. With regard to Sub-rules (4) and (5) of Rule 12, this Court observed as follows: (Hari Ram case, SCC p.220, para 27)

"27. Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be

less than 18 years on the date of offence on the basis of any proof specified in Sub-rule (3) the court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the court or Board after examining and obtaining any other documentary proof referred to in Sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised."

This Court observed that the scheme of the 2000 Act was to give children, who have, for some reason or the other, gone astray, to realize their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of the society, instead of degenerating into hardened criminals. In paragraph 59 of the Report, the Court held as under: (Hari Ram case, SCC p.227)

"59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-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."

The Court observed in Hari Ram that (SCC p. 227, para 62)

62..... Often parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which might have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12...."

29. The judgment in the case of Hari Ram Vs. State of Rajasthan and Another, was delivered by this Court on 5.5.2009. On that very day, judgment in Akbar Sheikh and Others Vs. State of West Bengal, was delivered by a two-Judge Bench of which one of us (R.M. Lodha, J.) was a member. In Akbar Sheikh and Others Vs. State of West Bengal, on behalf of one of the Appellants, Kabir, a submission was made that he was juvenile on the date of occurrence. While dealing with the said argument, this Court observed that no such question had ever been raised. Even where a similar question was raised by five other accused, no such plea was raised even before the High Court. On behalf of the Appellant, Kabir, in support of the juvenility, two documents were relied upon, namely, (i) statement recorded under Section 313 of the Code and (ii) voters' list. As regards the statement recorded under Section 313, this Court was of the opinion that the said document was not decisive. In respect of voters' list, this Court observed that the same had been prepared long after the incident occurred and it was again not decisive. In view of these findings, this Court did not find any merit in the claim of Kabir, one of the Appellants, that he was juvenile and the submission was rejected. From a careful reading of the judgment in the

matter of Akbar Sheikh and Others Vs. State of West Bengal, , it is clear that the two documents on which reliance was placed in support of claim of juvenility were not found decisive and, consequently, no inquiry for determination of age was ordered. From the consideration of the matter by this Court in Akbar Sheikh and Others Vs. State of West Bengal, , it is clear that the case turned on its own facts.

30. As a matter of fact, prior to the decisions of this Court in Hari Ram Vs. State of Rajasthan and Another, and Akbar Sheikh and Others Vs. State of West Bengal, , a three-Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) in Pawan Vs. State of Uttaranchal, had considered the question relating to admissibility of claim of juvenility for the first time in this Court with reference to Section 7A. The contention of juvenility was raised for the first time before this Court on behalf of the two Appellants, namely, A-1 and A-2. The argument on their behalf before this Court was that they were juvenile within the meaning of 2000 Act on the date of incident and the trial held against them under the Code was illegal. With regard to A-1, his school leaving certificate was relied on while as regards A-2, reliance was placed on his statement recorded under Section 313 and the school leaving certificate. Dealing with the contention of juvenility, this Court stated that the claim of juvenility could be raised at any stage, even after final disposal of the case. The Court then framed the question in paragraph 41 of the Report as to whether an inquiry should be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court.

31. It was held in Pawan Vs. State of Uttaranchal, that where the materials placed before this Court by the accused, prima facie, suggested that he was "juvenile" as defined in 2000 Act on the date of incident, it was necessary to call for the report or an inquiry to be made for determination of the age on the date of incident. However, where a plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even prima facie satisfaction of the court is not made out, further exercise in this regard may not be required. It was also stated that if the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate material that the accused had not attained the age of 18 years on the date of commission of offence. In absence of adequate material, any further inquiry into juvenility would not be required.

32. Having regard to the general guidelines highlighted in paragraph 41 with regard to the approach of this Court where juvenility is claimed for the first time, the court then considered the documents relied upon by A-1 and A-2 in support of the claim of juvenility on the date of incident. In respect of the two documents relied upon by A-2, namely, statement under Section 313 of the Code and the school leaving certificate, this Court observed that the statement recorded under Section 313 was a tentative observation based on physical appearance which was

hardly determinative of age and insofar as school leaving certificate was concerned, it did not inspire any confidence as it was issued after A-2 had already been convicted and the primary evidence like entry from the birth register had not been produced. As regards school leaving certificate relied upon by A-1, this Court found that the same had been procured after his conviction and no entry from the birth register had been produced. The Court was, thus, not prima facie impressed or satisfied by the material placed on behalf of A-1 and A-2. Those documents were not found satisfactory and adequate to call for any report from the Board or trial court about the age of A-1 and A-2.

33. In *Jitendra Singh @ Babboo Singh and Another Vs. State of U.P.*, , on behalf of the Appellant, a plea was raised that he was minor within the meaning of Section 2(k) of 2000 Act on the date of commission of the offence. The Appellant had been convicted for the offences punishable under Sections 304-B and 498A Indian Penal Code and sentenced to suffer seven years' imprisonment under the former and two years under the latter. The Appellant had got the bail from the High Court on the ground of his age which was on medical examination certified to be around seventeen years on the date of commission of the offence. One of us (T.S. Thakur, J.) who authored the judgment for the Bench held that in the facts and circumstances of the case, an enquiry for determining the age of the Appellant was necessary. This Court referred to the earlier decisions in *Gopinath Ghosh Vs. The State of West Bengal*, , *Bhoop Ram Vs. State of U.P.*, , *Bhola Bhagat Vs. State of Bihar*, , *Hari Ram Vs. State of Rajasthan and Another*, and *Pawan Vs. State of Uttaranchal*, and then held that the burden of making out the prima facie case had been discharged.

34. In paragraphs 9, 10 and 11 of the Report, it was held as under: (*Jitendra Singh case*, SCC pp. 526-27):

9. The burden of making out a prima facie case for directing an enquiry has been in our opinion discharged in the instant case inasmuch as the Appellant has filed along with the application a copy of the school leaving certificate and the marksheet which mentions the date of birth of the Appellant to be 24-5-1988. The medical examination to which the High Court has referred in its order granting bail to the Appellant also suggests the age of the Appellant being 17 years on the date of the examination. These documents are sufficient at this stage for directing an enquiry and verification of the facts.

10. We may all the same hasten to add that the material referred to above is yet to be verified and its genuineness and credibility determined. There are no doubt certain telltale circumstances that may raise a suspicion about the genuineness of the documents relied upon by the Appellant. For instance, the deceased Asha Devi who was married to the Appellant was according to Dr. Ashok Kumar Shukla, Pathologist, District Hospital, Rae Bareilly aged 19 years at the time of her death. This would mean as though the Appellant husband was much younger to his wife which is not the usual practice in the Indian context and may happen but infrequently. So also the fact that the Appellant obtained the school leaving

certificate as late as on 17-11-2009 i.e. after the conclusion of the trial and disposal of the first appeal by the High Court, may call for a close scrutiny and examination of the relevant school record to determine whether the same is free from any suspicion, fabrication or manipulation. It is also alleged that the electoral rolls showed the age of the accused to be around 20 years while the extract from the panchayat register showed him to be 19 years old.

11. All these aspects would call for close and careful scrutiny by the court below while determining the age of the Appellant. The date of birth of Appellant Jitendra Singh's siblings and his parents may also throw considerable light upon these aspects and may have to be looked into for a proper determination of the question. Suffice it to say while for the present we consider it to be a case fit for directing an enquiry, that direction should not be taken as an expression of any final opinion as regards the true and correct age of the Appellant which matter shall have to be independently examined on the basis of the relevant material.

38. In Pawan Vs. State of Uttaranchal, , a 3-Judge Bench has laid down the standards for evaluating claim of juvenility raised for the first time before this Court. If Pawan Vs. State of Uttaranchal, had been cited before the Bench when criminal appeal of Abuzar Hossain @ Gulam Hossain came up for hearing, perhaps reference would not have been made. Be that as it may, in light of the discussion made above, we intend to summarise the legal position with regard to Section 7A of 2000 Act and Rule 12 of the 2007 Rules. But before we do that, we say a word about the argument raised on behalf of the State of Bihar that claim of juvenility cannot be raised before this Court after disposal of the case. The argument is so hopeless that it deserves no discussion. The expression, "any court" in Section 7A is too wide and comprehensive; it includes this Court. Supreme Court Rules surely do not limit the operation of Section 7A to the courts other than this Court where the plea of juvenility is raised for the first time after disposal of the case.

39. Now, we summarise the position which is as under:

39.1 A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in appeal court.

39.2 For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3 As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which

may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh and Others Vs. State of West Bengal, and Pawan Vs. State of Uttaranchal, these documents were not found prima facie credible while in Jitendra Singh @ Babboo Singh and Another Vs. State of U.P., the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the Appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent.

39.4 An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.

39.5 The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 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.

39.6 Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at threshold whenever raised."

14. Justice T.S. Thakur, a member of the same Bench had also penned down a concurring judgment. Paragraphs 42 to 45, 47 & 48 are reproduced below:

"42. In that paragraph 39.4 of the order fall cases in which the accused setting up the plea of juvenility is unable to produce any one of the documents referred to in Rule 12(3)(a)(i) to (iii) of the Rules, under the Act, not necessarily because, he is deliberately withholding such documents from the court, but because, he

did not have the good fortune of ever going to a school from where he could produce a certificate regarding his date of birth. Para 36(IV) sounds a note of caution that an affidavit of a parent or a sibling or other relative would not ordinarily suffice, to trigger an enquiry into the question of juvenility of the accused, unless the circumstances of the case are so glaring that the court is left with no option except to record a prima facie satisfaction that a case for directing an enquiry is made out.

43. What would constitute a "glaring case" in which an affidavit may itself be sufficient to direct an inquiry, is a question that cannot be easily answered leave alone answered by enumerating exhaustively the situations where an enquiry may be justified even in the absence of documentary support for the claim of juvenility. Two dimensions of that question may all the same be mentioned without in the least confining the sweep of the expression "glaring case" to a strait-jacket formulation.

43.1 The first of these factors is the most mundane of the inputs that go into consideration while answering a claim of juvenility like "Physical Appearance" of the accused made relevant by Rule 12(2) of the Rules framed under the Act. The Rule reads:

12. Procedure to be followed in determination of Age.-

(1) xxxx

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

Physical appearance of the accused is, therefore, a consideration that ought to permeate every determination under the Rule aforementioned no matter appearances are at times deceptive, and depend so much on the race or the region to which the person concerned belongs. Physical appearance can and ought to give an idea to the Court at the stage of the trial and even in appeal before the High Court, whether the claim made by the accused is so absurd or improbable that nothing short of documents referred to in this Rule 12 can satisfy the court about the need for an enquiry. The advantage of "physical appearance" of the accused may, however, be substantially lost, with passage of time, as longer the interval between the incident and the court's decision on the question of juvenility, the lesser the chances of the court making a correct Assessment of the age of the accused. In cases where the claim is made in this Court for the first time, the advantage is further reduced as there is considerable time lapse between the incident and the hearing of the matter by this Court.

43.2. The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence, showing his date of birth, by reference to

any public document like the register of births maintained by Municipal Authorities, Panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the Court. Again there may be cases in which the accused may not be in a position to provide a birth certificate from the Corporation, the municipality or the Panchayat, for we know that registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful.

44. Rule 12(3) of the Rules makes only three certificates relevant. These are enumerated in Sub-Rule 3(a)(i) to (iii) of the Rule which reads as under:

"(3)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;

Non-production of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for Sub-rule 3(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the "absence" of the certificates.

45. Rule 12(3)(b) runs as under:

"12(3)(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."

The expression "absence" appearing in the above provision is not defined under the Act or the Rules. The word shall, therefore, be given its literal dictionary meaning which is provided by Concise Oxford dictionary as under:

"Absence.--Being away from a place or person; time of being away; non-existence or lack of; inattention due to thought of other things."

Black's Law Dictionary also explains the meaning of "absence" as under:

"Absence. (1). The state of being away from one's usual place of residence. 2. A failure to appear, or to be available and reachable, when expected. 3. Louisiana Law. The State of being an absent person-Also termed (in sense 3) absentia."

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 per cent 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.

48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including information regarding the age of the

parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the Court may or may not direct an enquiry."

15. A careful reading of the observations made by the Apex Court in *Abuzar Hossain* (Supra) a judgment of three judges and more particularly paragraphs 39.1 to 39.6, which have summarized the legal position, would show that in making a claim with regard to juvenility after conviction the claimant must produce the same material which may prima facie satisfy the court that an enquiry into such a claim is necessary and the initial burden falls on the claimant, who has to discharge the same to the satisfaction of the court. While the court opined that there can be no straight jacket formula nor can there be an exhaustive list as to what would be sufficient for discharging the initial burden but the documents referred to in Rule 12(3)(a)(i), (ii), (iii) would positively be sufficient for prima facie satisfaction of the court with regard to issuing direction for conducting a further enquiry under Rule 12 of the Act.

16. The Court also considered the fact that documents such as Voters List or a school leaving certificate obtained after conviction would be taken on the facts of each case in contrast the school leaving certificate or a mark-sheet or birth certificate which would prima facie inspire confidence of the court. Certainly an affidavit of the claimant or his parents or sibling or a relative in support of claim of juvenility raised for the first time either during the pendency of the matter or after disposal of the case, shall not be sufficient for justifying an enquiry. The court has also cautioned that Court should also be guided by the objective of 2000 Act, to ensure that the aims and objectives of the Act are not defeated by a hyper-technical approach, but the claims lacking in credibility or patently absurd claims or inherently improbable claims must be rejected. The view expressed by Justice T.S. Thakur in his concurring judgment have been noticed in paragraphs aforegoing, wherein great stress has been laid on the fact that illiteracy and crime have a close nexus and thus a large number of persons engaged in criminal activities may not have had the opportunity to go to school or may not belong to such strata of society who have obtained birth certificates of their children. The court has thus observed that the advantage of a beneficial legislation cannot be denied to unfortunate and wayward delinquents and also held that a wooden approach should not be adopted. The court should be liberal at the stage of directing conducting an enquiry to avoid miscarriage of justice.

17. Applying the law laid down to the facts, it may be noticed that the petitioner did not raise the claim of juvenility either during trial and has been raised for the first time in this petition. The petitioner has not been able to produce any of the documents as mentioned in Rule 12(3)(i), (ii), (iii) of Act. What has been produced along with the petition is a copy of the ration card. It may be noticed that the date of the incident is 6.10.2001 and copy of the ration card which has been placed on record was prepared on 14.9.2007, which is after the incident.

18. In this case also there is an affidavit in support of the petition, claiming juvenility. The question is would that be sufficient to order an inquiry. In the case of Abuzar Hossain (Supra), Justice Lodha speaking for himself and Justice Dave have held as under:

"39.4 An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscious of the court to order an enquiry into determination of the age of the delinquent."

19. On the other hand Justice Thakur at para 48 has held as under:

"48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry."

20. To the extent an affidavit is not sufficient to order an inquiry the view of Justice Lodha and Justice Thakur would prevail. In my view a copy of the ration card procured after the date of incident would not be sufficient for justifying enquiry to determine the age of the person. No other supporting document or material has been placed to justify holding an enquiry into the matter. Accordingly, the petition stands dismissed.