[2019] 9 S.C.R. 735

SANJEEV KUMAR GUPTA

v.

THE STATE OF UTTAR PRADESH AND ANR.

(Criminal Appeal No. 1081 of 2019)

JULY 25, 2019

[DR. DHANANJAYA Y. CHANDRACHUD AND INDIRA BANERJEE, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000: s.7A – Prosecution case was that son of the complainant was murdered after a demand for ransom – Second respondent was arrested during the course of investigation – Claim for juvenility under 2000 Act – Basis was matriculation certificate issued by CBSE – When matter travelled upto Juvenile Justice Board (JJB), the claim of juvenility was rejected – JJB also observed that while obtaining a driving license and an Aadhaar card, second respondent had declared his date of birth as 17.12.1995 and on that basis he was not juvenile on the date of incident – On revision, High Court allowed the claim of juvenility on the ground that matriculation certificate issued by CBSE would have to be given precedence over any other evidence of the date of birth by virtue of r.12(3)(a) – Appeal by complainant – Held: Cl. (a) of r.12(3) provides that for the purpose of seeking evidence in the enquiry, the documents that have to be obtained are matriculation or equivalent certificate, if available; and in its absence date of birth certificate from the school first attended; and in its absence, birth certificate given by a corporation, municipal authority or panchayat – Thus, cl. (a) of r.12(3) contains a hierarchical ordering, evident from the use of the language "in the absence whereof" – This indicates that a matriculation or equivalent certificate is given precedence – In the instant case, the date of birth which was forwarded in the roll of students of the school where the second respondent was a student from Class V to Class X was the sole basis of date of birth recorded in the matriculation certificate – The said date of birth was without any underlying document, as stated by the Principal in the course of the enquiry before the JJB and, therefore, cannot be accepted as

authentic or credible – The date of birth in the school first attended by second respondent and the transfer certificate of that school contained the date of birth as 17.12.1995 which matched with the the date of birth which was voluntarily disclosed by the second respondent while obtaining Aadhar card and also driving licence – Once it is held that the date of birth of the second respondent is 17.12.1995, he is not entitled to the claim of juvenility as on the date of the alleged incident which took place on 18.08.2015 – The order passed by the Sessions Judge, confirming the decision of the JJB rejecting the claim of juvenility is accordingly maintained – Juvenile Justice (Care and Protection of Children) Rules, 2007 – r.12(3).

Allowing the appeal, the Court

HELD: 1. Section 7A of the Act of 2000 provides the procedure to be followed when a claim of juvenility is raised before a court. Upon a claim being raised that an accused was a juvenile on the date of the commission of the offence, the Court is required to make an enquiry, take evidence and to determine the age of the person. The court has to record a finding whether the person is a juvenile or a child, stating the age as nearly as may be. Rule 12(3) of the Rules of 2007 contains a procedural provision governing the determination of age by the Court or by the Board. Clause (a) of Rule 12(3) provides that for the purpose of seeking evidence in the enquiry, the following documents would have to be obtained: matriculation or equivalent certificate if available; in the absence of (i), the date of birth certificate from the school first attended; and in the absence; (ii) the birth certificate given by a corporation, municipal authority or panchayat. Clause (a) of Rule 12(3) contains a hierarchical ordering, evident from the use of the language "in the absence whereof". The matriculation certificate is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended, can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained. [Para 10] [743-A, F; 744-F-H; 745-A-B]

2. The deposition of the school Headmaster indicated that the second respondent was admitted to Secondary School, Shikohabad in the fifth standard and was a student of the school until he completed his matriculation. The second respondent attended the first school until the fourth standard. The school register and transfer certificate form of that school specifically contained an entry in regard to the date of birth of the second respondent as 17 December 1995. The date of birth which was recorded in the certificate of the first school completely matched the date of birth which was voluntarily disclosed by the second respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the date of birth was reflected as 17 December 1995. The driving license and the Aadhaar card are not stand alone documents. The date of birth in the records of school where the second respondent was a student from Class V to Class X was without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. On the other hand, there was a clear and unimpeachable evidence in the form of the date of birth which was recorded in the records of first school attended which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence. The High Court reversed the findings of the Sessions Judge purely on the basis of the matriculation certificate. The date of birth as reflected therein cannot be accepted as authentic or credible. Once it is held that the date of birth of the second respondent is 17 December 1995, he is not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18 August 2015. [Paras 14, 15] [751-G-H; 752-A-H]

Prag Bhati v. State of Uttar Pradesh **(2016) 12 SCC 744 : [2016] 2 SCR 1089 ;** *Ramdeo Chauhan alias Raj Nath v. State of Assam* **(2001) 5 SCC 714 : [2001] 3 SCR 669 ;** *Ashwani Kumar Saxena v. State of Madhya Pradesh* **(2012) 9 SCC 750 : [2012] 10 SCR 540 ;** *Abuzar Hossain alias Gulam Hossain v. State of West Bengal* **(2012) 10 SCC 489 : [2012] 9 SCR 244 – referred to.**

Case Law Reference

[2016] 2 SCR 1089	**referred to**	**Para 4**
[2001] 3 SCR 669	**referred to**	**Para 4**
[2012] 10 SCR 540	**referred to**	**Para 5**
[2012] 9 SCR 244	**referred to**	**Para 7(iii)**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1081 of 2019.

From the Judgment and Order dated 14.11.2018 of the High Court of Judicature at Allahabad in Crl. Revision No. 2952 of 2017.

Ms. Kamini Jaiswal, Dhananjay Garg, Baban Kr. Sharma, Ms. Rani Mishra, Jatinderpal Singh and Ms. Pratiksha Tripathi, Advs. for the Appellant.

Ravindra Singh, Sr. Adv., Vishnu Shankar Jain, Raman Yadav, Syed Mehdi Imam, Ms. Varnita Rastogi, Dr. Amarendra Pratap Yadav, Ms. Kritiya Pandey, Rupesh Kumar, Tara Chandra Sharma, Ms. Neelam Sharma and Ms. Pankhuri Shrivastava, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. The High Court of Judicature at Allahabad allowed a claim of juvenility in a decision of its Single Judge dated 14 November 2018. The judgment is challenged in this appeal[1] by the complainant.

2. On 28 October 2015, a First Information Report was lodged by the appellant at PS Ekka in the district of Firozabad in Uttar Pradesh which was registered as Case Crime 252 of 2016 under Section 364 A of the Penal Code. The allegation is that the appellant received a call on his cell phone from an unknown number and the caller wished to speak to his son, claiming to be his teacher. The appellant's son who was about thirteen years old was studying in the eighth standard in a public school in Shikohabad. After calling back on the number, the appellant's son left his shop after a conversation, never to return. The victim is alleged to have been murdered after a demand for ransom. His body was allegedly found in a canal. The second respondent was arrested during the course of the investigation.

[1] Criminal Revision 2952 of 2017

3. On 9 December 2015, the accused filed an application claiming to be a juvenile on the date of the incident under the Juvenile Justice (Care and Protection of Children) Act 2000[2]. He submitted that on the date of the alleged offence he was sixteen years ten months and eleven days old. In support of the claim, he relied on a matriculation certificate issued by the Central Board of Secondary Education[3], Delhi reflecting his date of birth as 17 December 1998.

4. By an order dated 2 July 2016 the Juvenile Justice Board[4] allowed the application of the second respondent – accused and declared him to be a juvenile on the date of the alleged offence. The appellant instituted a criminal appeal before the Court of the Sessions Judge, Firozabad[5]. On 16 September 2016, the Sessions Judge remanded the case to the JJB for determination of the age of the second respondent upon medical examination. The Chief Medical Officer, Agra constituted a Medical Board which in its report dated 19 November 2016 found that the age of the second respondent was about nineteen years. Aggrieved by the order of the Sessions Judge, the second respondent filed a revision[6] before the High Court which was dismissed as withdrawn on 4 January 2017. He instituted a petition[7] under Section 482 of the Code of Criminal Procedure 1973[8] which was disposed of by the High Court on 17 April 2017 directing the early disposal of the pending application of the second respondent. On 1 July 2017, the JJB rejected the claim of juvenility on the basis of the medical report. The JJB also observed that the second respondent had filed an application for obtaining a driving license and an Aadhaar card in which he had declared his date of birth as 17 December 1995. On this basis, the JJB held that the second respondent was an adult on the date of the incident. The second respondent filed an appeal against the order of the JJB before the Sessions Judge, Firozabad[9]. The Sessions Judge rejected the appeal by an order dated 2 August 2017 observing, on the basis of the decision of this Court in **Prag Bhati** v **State of Uttar Pradesh**[10] that the credibility and authenticity of the

[2] Act of 2000
[3] CBSE
[4] JJB
[5] Criminal Appeal 41 of 2016
[6] Revision Petition 3246 of 2016
[7] Petition No 12801 of 2017
[8] CrPC
[9] Criminal Appeal 27 of 2017
[10] (2016) 12 SCC 744

documents depends upon the circumstances of each case and that in a case involving conflicting school certificates, a further inquiry would be required. The Sessions Judge also placed reliance on the decision of this Court in **Ramdeo Chauhan alias Raj Nath** v **State of Assam**[11].

5. Aggrieved by the decision of the Sessions Judge, the second respondent moved the High Court of Judicature at Allahabad in a Criminal Revision. The High Court allowed the revision and declared that on the date of the alleged offence, the second respondent was a minor. In coming to this conclusion, the High Court adverted to the provisions contained in Section 7 A of the Act of 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007[12] as interpreted by this Court in **Ashwani Kumar Saxena** v **State of Madhya Pradesh**[13]. The High Court held that the matriculation certificate issued by the CBSE would have to be given precedence over any other evidence of the date of birth, having due regard to the provisions contained in Rule 12(3)(a). It held that the validity of the matriculation certificate issued by the CBSE had not been disputed but what was in dispute was the date of birth which was recorded in the certificate. The Court took notice of the fact that during the course of the investigation, the investigating officer had collected the driving licence, Aadhaar card, voter's ID and eighth standard mark sheets which indicated that the date of birth of the second respondent was 27 December 1995. The matriculation certificate indicated that the date of birth was 17 December 1998. According to the medical report, the second respondent was about nineteen years of age on 9 November 2016. Ultimately, in the view of the High Court, precedence would have to be given to the date of birth which was indicated in the matriculation certificate. The decision of the JJB, as affirmed in appeal by the Sessions Judge, was set aside and the claim of juvenility was allowed.

6. Notice was issued in the Special Leave Petition was instituted before this Court under Article 136 of the Constitution on 14 January 2019. On 16 April 2019, this Court issued notice to the CBSE and directed it to produce all necessary records pertaining to the second respondent. CBSE was directed to file an affidavit explaining the basis on which the date of birth was recorded in the matriculation certificate. On 6 May 2019 after the records were produced before this Court an affidavit was

[11] (2001) 5 SCC 714
[12] Rules of 2007
[13] (2012) 9 SCC 750

filed by CBSE. An opportunity was given to the parties to respond. After the parties have filed their affidavits and responses, the proceedings have been taken up for final disposal.

7. Ms Kamini Jaiswal, learned counsel appearing on behalf of the appellant submitted that:

(i) There is a serious dispute in regard to the authenticity of the date of birth recorded in the matriculation certificate issued by CBSE. Buttressing this submission, the learned counsel submitted that:

(a) the date of birth in the school register of Saket Vidya Sthali, Jedajhal, Ekka, Firozabad where the second respondent studied from Kindergarten to the fourth standard is 17 December 1995;

(b) The date of birth in the learner's driving license, driving licence and Aadhaar card of the second respondent is reflected as 17 December 1995;

(c) The driving licence as well as the Aadhaar card have been obtained after the second respondent voluntarily disclosed the date of birth as 17 December 1995;

(d) During the course of the inquiry the Headmaster of Maa Anjani Public School, Shikohabad deposed before the JJB on 22 January 2016 that the date of birth of 17 December 1998 had been recorded on the information given by the parent and though an affidavit is generally obtained at the time of admission, this had not been done at the time of the admission of the second respondent. Moreover, no record in respect of the date of birth had been produced by the father of the second respondent at the time of admission; and

(e) The affidavit which was filed in these proceedings by CBSE indicates that the date of birth in its records was adopted only on the basis of the roll submitted by the concerned school while sending up its students for the matriculation examination without any further enquiry by CBSE;

(ii) In the present case, the material on the record, including the record which was obtained by the investigating officer during the course of the investigation, clearly indicates that the date of birth of the second respondent is 17 December 1995;

A (iii) The decision in **Ashwani Kumar Saxena** (supra) of a two judge Bench of this Court cannot be considered in isolation in view of a subsequent decision of a three judge Bench in **Abuzar Hossain alias Gulam Hossain** v **State of West Bengal**[14] and of a two judge Bench in **Parag Bhati** (supra). The last of the three decisions considers both the earlier two decisions; and

B (iv) The Act of 2000 has been repealed by the Juvenile Justice (Care and Protection of Children) Act 2015[15]. The Act of 2015 came into force on 31 December 2015. Section 94 of the Act of 2015 does not give precedence to the matriculation certificate to determine the age of the person. Since Section 94 deals with a matter of procedure. Hence, C though the incident took place on 18 August 2015, the application filed by the second respondent claiming the benefit of juvenility will have to be decided in terms of the provisions contained in Section 94 of the Act of 2015. Having regard to the incontrovertible material on the record, the date of birth of the second respondent is 17 December 1995.

D 8. On the other hand, Mr Ravindra Singh, learned senior counsel appearing on behalf of the second respondent submitted that:

(i) The JJB after a detailed enquiry came to the conclusion that the date of birth of the second respondent is 17 December 1998;

E (ii) The date in the Aadhaar card or in the driving licence issued by the RTO may have been given wrongly by the accused for seeking an undue advantage. For this, he may face consequences under the law but that by itself does not negate the claim of juvenility where, it is found to be substantiated in the date of birth recorded in the matriculation certificate;

F (iii) The date recorded in the matriculation certificate must prevail by virtue of Rule 12(3); and

(iv) The cross-examination of the witness, Dr Udayvir Singh Yadav, who was a former Principal/Manager of Saket Vidya Sthali, Jedajhal G contains several inconsistencies consequent upon which, the certificate issued by the school cannot be regarded as of any significance. Hence, it is urged that the judgment of the High Court should not, in the facts of the present case, be interfered with.

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[14] (2012) 10 SCC 489

H [15] Act of 2015

9. The rival submissions fall for consideration.

10. Section 7 A of the Act of 2000 provides the procedure to be followed when a claim of juvenility is raised before a court. Section 7 A provides thus:

> "S.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:
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> 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.
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> (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

Upon a claim being raised that an accused was a juvenile on the date of the commission of the offence, the Court is required to make an enquiry, take evidence and to determine the age of the person. The court has to record a finding whether the person is a juvenile or a child, stating the age as nearly as may be. Rule 12(3) of the Rules of 2007 contains a procedural provision governing the determination of age by the Court or by the Board. Rule 12(3) stipulates thus:

> "12 Procedure to be followed in determination of Age.
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> …
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> (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court

A 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;

B (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;

C (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

D 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),

E (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."

Clause (a) of Rule 12(3) provides that for the purpose of seeking evidence in the enquiry, the following documents would have to be

F obtained:

(i) matriculation or equivalent certificate if available;

(ii) in the absence of (i), the date of birth certificate from the school first attended; and

G (iii) in the absence; (ii) the birth certificate given by a corporation, municipal authority or panchayat.

Clause (a) of Rule 12(3) contains a hierarchical ordering, evident from the use of the language "in the absence whereof". This indicates that where a matriculation or equivalent certificate is available, the

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documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended, can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained. This facet of Rule 12(3) was noticed in the two judge Bench decision of this Court in **Ashwani Kumar Saxena** (supra). Justice KSP Radhakrishnan, while holding that the procedures laid down in the CrPC cannot be imported while making an enquiry in regard to a claim of juvenility under the Rules of 2007 observed:

> "32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."

The Court took notice of the fact that there could be situations in which the date of birth recorded in the matriculation certificate, or for that matter in the other certificates referred to in Rule 12(3)(a) may not be correct. The Court held that where it was only when those documents are found to be fabricated or manipulated could the date of birth as reflected be discarded. The Court held:

> "34. ...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

A by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ 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 Juvenile Justice Board or the committee need to go for medical report for age determination."

In the view of the Court, it was only if the above conditions were fulfilled, that a medical report could be called.

11. The decision in **Ashwani Kumar Saxena** (supra) was rendered on 13 September 2012. Soon thereafter, a three judge Bench of this Court considered the provisions of Section 7 A and Rule 12 in **Abuzar Hossain alias Gulam Hossain** (supra). Justice RM Lodha (as the learned Chief Justice then was), speaking for himself and Justice Anil R Dave observed:

"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 Rules 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* [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and *Pawan* [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in *Jitendra Singh* [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] 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 7-A and order an enquiry for determination of the age of the delinquent."

The above decision in **Abuzar Hossain alias Gulam Hossain** (supra) was rendered on 10 October 2012. Though the earlier decision in **Ashwani Kumar Saxena** (supra) was not cited before the Court, it appears from the above extract that the three judge Bench observed that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down. Concurring with the judgment of Justice RM Lodha, Justice TS Thakur (as the learned Chief Justice then was) observed that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former the Court simply records a *prima facie* conclusion while in the latter a declaration is made on the basis of evidence. Hence the approach at the stage of directing the inquiry has to be more liberal:

"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

A 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."

Both these judgments have since been considered by a two judge Bench of this Court in **Prag Bhati** (supra), where it was observed:

B "36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or
C a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in *Abuzar Hossain*[*Abuzar Hossain* v. *State of W.B.*, (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case."

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12. The Act of 2015 came into force on 15 January 2016. Section 111 repeals the earlier Act of 2000 but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the
E determination of age, is in the following terms:

"94. Presumption and determination of age.- (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said
F person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds
G for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

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(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

13. Ms Jaiswal submitted that Section 94 deals with a matter of procedure. Hence, it was urged that though the incident in the present case is alleged to have taken place on 18 August 2015 and the application claiming the benefit of juvenility was submitted on 9 December 2015, the application should be governed by the provisions of Section 94 and not by Section 12(3) of the Rules of 2007. For the purpose of the present

A case, we have proceeded to analyse the facts on the basis of the provisions of Rule 12(3) of the Rules of 2007 (as was urged on behalf of the second respondent). We have, as will be analysed hereafter, come to the conclusion that even on that basis, the second respondent was not a juvenile on the date of the incident. In other words, whether the case is approached from the stand point of Rule 12(3) of the Rules of 2007 or Section 94(2) of the 2015 Act does not ultimately make any difference to the conclusion.

14. Now it is in this background that it becomes necessary for the Court to determine whether the High Court, in the exercise of its revisional jurisdiction, was justified in reversing the view of the learned Sessions Judge that the second respondent was not a juvenile on the date of the incident. In seeking to place reliance on the date of birth (17 December 1998) recorded in the CBSE matriculation certificate, learned counsel appearing on behalf of the second respondent has submitted that under the provisions of Rule 12(3)(a) the said certificate has precedence over any other evidentiary document. In the course of the hearing of the appeal, we directed the CBSE to produce its records and to file an affidavit indicating the basis on which the date of birth was recorded in the matriculation certificate. The affidavit filed by the CBSE indicates that the date of birth in the records maintained by the CBSE was recorded purely on the basis of the final list of students forwarded by Maa Anjani Senior Secondary School, Etah Road, Shikohabad. The affidavit of the Assistant Secretary, CBSE states:

> "… Maa Anjani Senior Secondary School, Etah Road, Shikohabad, sent Final list of Students registered for Class IX (2011-12) as (Eligible for Class X Examination Year 2013) of the School to the Central Board of Secondary Education, Regional office, Allahabad. In the said Final List of Students registered for Class IX (2011-12) (Eligible for Class X Examination for year – 2013) at Serial No 00068 shows the name of Puneet Yadav son of Shri Rameshwar Singh and Smt Vishesh Devi and his date of birth has been shown as 17.12.1998 which contain the Signature and Photograph of Puneet Yadav. The date of Entry has been shown as 08.09.2011."
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> "… the Principal, Maa Anjani Senior Secondary School, Shikohabad, vide letter dated 04.02.2013 sent Roll Number – wise

> List of 248 candidates for class X-2013 to the Assistant Secretary (Examination), C.B.S.E., Allahabad. Name of Puneet Yadav son of Rameshwar Singh and Mrs Vishesh Devi, Roll No 5156848 has been shown with date of birth as 17.12.1998 at page No 896 of the List, with the signature of Puneet Yadav."
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> …
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> "… the Certificate for Secondary School Examination (Session 2011-13) (true copy of which was been appended as Annexure CA-1 received by the Central Board of Secondary Education with the Order dated 16.04.2019 of this Hon'ble Court) showing the Date of Birth of Puneet Yadav as 17.12.1998 was issued on the basis of aforementioned records of the Central Board of Secondary Education."

CBSE has stated before this Court that the date recorded in the matriculation certificate was purely on the basis of the final list of students forwarded by the Headmaster of Maa Anjani Senior Secondary School, Shikohabad. The Headmaster of the Maa Anjani Senior Secondary School, Shikohabad deposed during the enquiry before the JJB, Firozabad. In the course of her examination, Headmaster Dipti Solanki stated:

> "...We note down the date of birth of the student at the time of admission as per the information given by the parents and at the same time we obtain an affidavit but we could not procure an affidavit from this student. I have committed a mistake by not procuring an Affidavit from this student. The date of birth was entered on the basis of the information given by the parent/father."

The Headmaster further stated:

> "...The father did not produce any record at the time of admission in respect of the date of birth of the student. They would have been asked to produce the record of class 4 at the time of admission but they did not. I cannot tell the reason thereof. The students are admitted without any document upto class 5."

The above deposition indicates that the second respondent was admitted to Maa Anjani Senior Secondary School, Shikohabad in the fifth standard and was a student of the school until he completed his matriculation. The second respondent attended the Saket Vidyasthali,

A Jedajhal, Firozabad until the fourth standard. The school register and transfer certificate form of that school specifically contains an entry in regard to the date of birth of the second respondent as 17 December 1995. Mr Ravindra Singh, learned senior counsel appearing on behalf of the second respondent has urged that the discrepancies which have been brought out in the course of the cross-examination of the former Manager B of the school would indicate that there is a doubt in regard to the authenticity of that certificate. However, in our view, what must weigh against the second respondent's submission is that the date of birth which has been recorded in the certificate of the Saket Vidya Sthali completely matches the date of birth which was voluntarily disclosed by the second C respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the originals of which were seized during the course of the investigation and have been produced before this Court, the date of birth is reflected as 17 December 1995. The driving license and the Aadhaar card are not standalone documents. The submission of the learned senior counsel that the date of birth in those documents may D have been furnished by the accused to obtain an undue advantage cannot simply be accepted since it tallies with the date of birth indicated in the school records of Saket Vidya Sthali school. It is evident from the above analysis that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Shikohabad was the sole basis E of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary School where the second respondent was a student from Class V to Class X is without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. On the other hand, there is a clear and unimpeachable evidence in the form of the date of birth which has been F recorded in the records of Saket Vidya Sthali school which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence. The High Court reversed the findings of the Sessions Judge purely on the basis of the matriculation certificate. For the reasons which we have indicated, the G date of birth as reflected therein cannot be accepted as authentic or credible. Once we come to the conclusion, as we have, that the date of birth of the second respondent is 17 December 1995, he was not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18 August 2015.

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15. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 14 November 2018. Criminal Revision 2952 of 2017 shall in consequence stand dismissed. The order passed by the Sessions Judge, confirming the decision of the JJB rejecting the claim of juvenility is accordingly maintained. The second respondent shall accordingly be dealt with in accordance with law on the basis of the finding recorded in the present judgment, rejecting the claim of juvenility.

Devika Gujral Appeal allowed.