

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL REVISION No.355 of 2019**

Arising Out of PS. Case No.-142 Year-2017 Thana- SALAKHUA District- Saharsa

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Laddu Kumar Mehta Son Of Late Kailash Mehta Resident Of Village -  
Paharpur, P.S.- Saurbazar O.P- Patarghat , Distt. - Saharsa

... .. Petitioner

Versus

1. The State of Bihar
2. Amarjeet Kumar Son of Surendra Singh Resident of Village- Bahuarua,  
P.S.- Salkhua, District- Saharsa.

... .. Respondents

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Acts/Sections/Rules:

- Sections 498A, 307 of the Indian Penal Code
- Sections 9, 94 of Juvenile Justice (Care and Protection of Children) Act, 2015

Cases referred:

- Rishipal Singh Solanki Vs. State of U.P., (2022) 8 SCC 602
- P. Yuvaprakash Vs. State, 2023 SCC Online SC 846
- Babloo Pasi Vs. State of Jharkhand, (2008) 13 SCC 133)
- Ashwani Kumar Saxena Vs. State of M.P., (2012) 9 SCC 750
- Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604
- Jabar Singh Vs. Dinesh, (2010) 3 SCC 757
- Ravinder Singh Gorkhi Vs. State of U.P., (2006) 5 SCC 584
- Parag Bhati Vs. State of U.P., (2016) 12 SCC 744,
- Nawaz v. State of U.P., (2011) 13 SCC 751
- Raju v. State of Haryana, (2010) 3 SCC 235

Revision petition - filed against the judgement whereby Sessions Judge has set aside the order passed by Juvenile Justice Board, whereby J.J. Board had declared the petitioner as juvenile.

Held - If the school certificates are available, the Board is precluded from considering any other evidence. Only in the absence of such school certificates, the Board is required to look into the birth certificate issued by Municipal Authority or Panchayat and only in the absence of such birth certificate, the Board can determine the age of the person by ossification test or by any other medical test. (Para 19)

Petitioner had filed original Mark-sheet of his matriculation, besides original Registration Card and original Admit Card and there is nothing on record to raise any doubt regarding veracity of these documents. (Para 27)

Petition is allowed. (Para 29)

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... .. Petitioner

Versus

1. The State of Bihar
2. Amarjeet Kumar Son of Surendra Singh Resident of Village- Bahuarua, P.S.-  
Salkhua, District- Saharsa.

... .. Respondents

**Appearance :**

For the Petitioner	:	Mr. Satish Kumar Singh, Advocate Mr. Dinesh Maharaj, Advocate
For the State	:	Mr. Bal Mukund Prasad Sinha, APP
For the O.P. No. 2	:	None

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR  
ORAL JUDGMENT**

**Date : 20-03-2025**

Learned counsel for the petitioner and learned APP for the State are present. However, nobody is present on behalf of O.P. No. 2, despite valid service of notice.

2. The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment dated 19.11.2018, passed by learned Sessions Judge, Saharsa in Cr. Appeal No. 28 of 2017, whereby learned Sessions Judge has set aside the order dated 06.10.2017, passed by learned Juvenile Justice Board, Saharsa in Criminal Case No. 1975 of 2017, arising out of Salkhua P.S. Case No. 142 of 2017, whereby learned J.J. Board had declared the petitioner/Laddu Kumar Mehta as juvenile. Learned Sessions Judge after setting aside the order passed by learned J.J. Board, Saharsa had remanded



the matter to the J.J. Board to determine the age of the petitioner afresh, utilizing “scientific tools and manners”.

**3.** The factual background of this case is that on the written report of one Amarjeet Kumar, Salkhua P.S. Case No. 142 of 2017 was registered on 15.07.2017 under Sections 498A, 307 and other allied Sections of the Indian Penal Code against the petitioner and three other co-accused, including the husband, brother-in-law and mother-in-law of the alleged victim. The petitioner happens to be brother-in-law of the victim. As per Lower Court Records, it transpires that the petitioner surrendered before the learned A.C.J.M.-II, Saharsa and thereafter, finding the petitioner juvenile, transferred the matter against the petitioner to Juvenile Justice Board, Saharsa. Learned J.J. Board from physical appearance concluded that the petitioner appears to be above 17 years of age.

**4.** Subsequently, one application was filed on behalf of the petitioner to declare him juvenile. In support of his claim, he filed original Registration Card, original Admit Card and original Marks Sheet of his matriculation examination held in 2015, showing his age as 23.02.2000. However, this application was never opposed by the State nor was any doubt expressed about the genuineness/veracity of the documents. But while



conducting inquiry, learned J.J. Board has also called Head Mistress of Middle School, Paharpur, first attended by the petitioner. However, at the time of examination of matriculation, he was studying in Utkramit M S Panchlakh Mekama Sonbarsa.

5. During inquiry, mother of the petitioner, Manjula Devi and brother of the petitioner, Arvind Kumar were also examined and after inquiry, learned J.J. Board came to the conclusion that the petitioner was juvenile, relying upon the matriculation certificates. However, in appeal, filed against the order, passed by learned J.J. Board, learned Appellate Court set aside the order and remanded the matter directing the J.J. Board to determine the age of the petitioner afresh. Being aggrieved by the order of the Appellate Court, the petitioner has preferred the present Criminal Revision petition.

6. I heard learned counsel for the petitioner and learned APP for the State.

7. Learned counsel for the petitioner submits that learned Appellate Court below has erroneously set aside the order of learned J.J. Board, whereby the petitioner was declared juvenile. He refers to Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 to argue that the legislature has provided clear procedure for determination of age of an



accused, if he is claiming to be juvenile. As per Section 94 of the Act, amongst others, matriculation or equivalent certificates are conclusive proof of age of the accused and thereafter, the Court is not permitted to make any roving inquiry, unless there is doubt as per physical appearance.

**8.** He further submits that as per the documents, the age of the petitioner on the alleged occurrence is 17 years 04 months and 05 days and learned A.C.J.M. or even J.J. Board had no doubt about the age of the petitioner in view of his physical appearance. As per the physical appearance of the petitioner, learned J.J. Board had come to the conclusion that the petitioner is above 17 years of age and hence, he conducted inquiry for determination of his age.

**9.** He further submits that the learned Appellate Court has erroneously relied upon the evidence of the Head Mistress of the first school and the evidence of other inquiry witnesses and mis-appreciated their evidence and came to the conclusion that the order passed by learned J.J. Board regarding the age of the petitioner was not sustainable.

**10.** However, learned APP for the State defends the impugned judgment submitting that there is no illegality or infirmity in it and hence, the present revision petition is liable to



be dismissed.

**11.** However, before I proceed to consider the rival submissions of the parties, it would be pertinent to refer to Sections 9 and 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the ‘Act of 2015’) which is applicable in this case, as the alleged occurrence has taken place after this Act came into effect.

**12.** Section 9 of the Act of 2015 reads as follows:

**“9. Procedure to be followed by a Magistrate who has not been empowered under this Act.**

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.



(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.”

(Emphasis supplied)

**13.** Section 94 of the Act of 2015 reads as follows:

**“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 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 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—

(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.”

(Emphasis supplied)

**14.** There is a catena of judicial precedents regarding the meaning and mandate of Sections 9 and 94 of the Act of 2015. In **Rishipal Singh Solanki Vs. State of U.P., (2022) 8 SCC 602**, Hon’ble Apex Court has threadbare discussed the issue of determination of juvenility of a person claiming to be juvenile. In this judgment, Hon’ble Apex Court referred to both Sections 9 and 94 of the Act of 2015 and scanned almost all the relevant judicial precedents and summarized the law regarding determination of juvenility in the following words:

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has



reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.



33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

(Emphasis supplied)

### **15. Hon’ble Apex Court in P. Yuvaprakash Vs.**

**State, 2023 SCC Online SC 846, has held as follows:**

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(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”.

(Emphasis supplied)

**16.** As such, as per the statutory provisions and judicial precedents, it emerges when the accused raises his claim regarding his juvenility before the J.J. Board, the Board is required to presume or determine the age of the accused as per the procedure as provided in Section 94 of the J.J. Act, 2015.

**17.** It also transpires that the initial burden to prove that the accused is juvenile rests on the accused himself. This initial burden has to be discharged with reference to the process of age determination as provided in Section 94(2) of the J.J. Act, 2015 and thereafter, it is for the J.J. Board/Committee/Court to raise the presumption of juvenility of the accused if it is *prima facie* satisfied on the basis of the documents as referred to in Section 94(2) of the J.J. Act, 2015. However, presumption based on *prima facie* satisfaction of the J.J. Board is not conclusive proof of the age of juvenility. Such presumption may be rebutted by contrary evidence led by the opposite party.

**18.** The standard of proof for raising presumption by the J.J. Board regarding juvenility is different from that required



in a proceeding initiated for determination of the age of the accused for the sake of declaring him juvenile or not. In such proceeding, the age of the accused is required to be determined on the basis of the materials on record and appreciation of evidence adduced by the parties. However, hyper-technical approach is not required to be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile. If two views are possible on the same evidence, the Board is required to lean in favour of holding the accused to be a juvenile in view of benevolent nature of the Act of 2015. However, the Board is also required to be cautious that the benevolent Act of 2015 is not misused by unscrupulous person to escape punishment for the offence committed. (Refer to **Rishipal Singh Solanki case (supra) and Babloo Pasi Vs. State of Jharkhand, (2008) 13 SCC 133**)

19. It also transpires that while appreciating the evidence for the sake of determination of the age, the Board is required to follow the process as provided in sub-section (2) of Section 94, as per which, school certificates have been given first precedence over any other proof to determine the age of the person. If the school certificates are available, the Board is



precluded from considering any other evidence. Only in the absence of such school certificates, the Board is required to look into the birth certificate issued by Municipal Authority or Panchayat and only in the absence of such birth certificate, the Board can determine the age of the person by ossification test or by any other medical test. As such, as per Section 94 of the J.J. Act of 2015, any other evidence – oral or otherwise for determination of age is excluded for consideration by the Board for determination of the age of the accused.

**20.** Here, it would be also pertinent to point out that when the documentary proofs as referred to in Section 94(2) of J.J. Act, 2015, are available and they are not found to be fabricated or manipulated, the Board is not expected to conduct a roving inquiry and go behind such documents to subject the person to ossification test or any other medical test. Here, one may refer to **Ashwani Kumar Saxena Vs. State of M.P., (2012) 9 SCC 750**, wherein **Hon'ble Supreme Court** has held as follows:

“34. Age determination inquiry contemplated under the JJ Act and the 2007 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, 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.”

(Emphasis supplied)

21. It also transpires that while appreciating the documentary proofs like the school certificates regarding the age or birth certificates issued by Municipal Authority or Panchayat, the same has to be appreciated on the touchstone of the principles as enshrined in Section 35 of the Evidence Act. In other words, such documents must be maintained by the public servant in discharge of his official duty or by other person in performance of a duty specially enjoined by the law.

22. In **Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604**, Hon’ble Supreme Court has held that to render documents admissible under Section 35 of the Evidence Act, following three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law.

23. In **Birad Mal Singhvi case** (supra), Hon’ble



**Supreme Court** has also held that an entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

**24. In Jabar Singh Vs. Dinesh, (2010) 3 SCC 757, Hon'ble Supreme Court** has held that any documents which are not maintained in discharge of official duty, such documents cannot be relevant under Section 35 of the Evidence Act for the purpose of determination of age of the person.

**25. In Ravinder Singh Gorkhi Vs. State of U.P., (2006) 5 SCC 584, Hon'ble Supreme Court** has refused to accept the entry of date of birth of school-leaving certificate holding that there is nothing on record to show that the said date of birth was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Evidence Act. No statement was made by the said Headmaster that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school-leaving certificate,





evidently had been prepared for the purpose of the case.

26. In many cases, **Hon'ble Supreme Court** has relied upon matriculation or equivalent certificates, including the school-leaving certificates as valid proof in determining the age of an accused person. (Refer to **Parag Bhati Vs. State of U.P., (2016) 12 SCC 744, Nawaz v. State of U.P., (2011) 13 SCC 751 and Raju v. State of Haryana, (2010) 3 SCC 235**)

27. Coming to the case on hand, I find that the petitioner, after raising his claim of juvenility by moving an application, filed original Mark-sheet of his matriculation, besides original Registration Card and original Admit Card and there is nothing on record to raise any doubt regarding veracity of these documents or any doubt that these documents were not maintained and issued by public servants in discharge of their official duties. As such, there was no occasion for the J.J. Board to go for any other proof regarding the age of the petitioner herein. Accordingly, learned J.J. Board rightly relied upon the matriculation certificate filed by the petitioner before it and declared him juvenile as per the date of birth mentioned in the matriculation certificate. However, the Appellate Court set aside the order of J.J. Board and remanded the matter directing the J.J. Board to determine the age of the petitioner afresh "utilizing



scientific tools and manners.”

28. Hence, I find that the impugned order passed by learned Appellate Court below is not sustainable in the eye of law and hence, the same is set aside and the order passed by learned J.J. Board is restored declaring the petitioner juvenile on the date of commission of the alleged offence.

29. Accordingly, the present petition stands allowed.

30. The Lower Court Record of the case be returned to the Court concerned forthwith.

31. Interlocutory applications, if any, also stand disposed of, accordingly.

32. Learned Registrar General is requested to circulate this order amongst all the Juvenile Justice Boards and the Children Courts of Bihar and also send a copy of the same to the Bihar Judicial Academy for discussing it in the training programmes for the Children Courts and Juvenile Justice Boards.

(Jitendra Kumar, J)

Shoaib/Chandan

AFR/NAFR	AFR
CAV DATE	N/A
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