A ASHWANI KUMAR SAXENA

v.

STATE OF M.P.

(Criminal Appeal No. 1403 of 2012)

B SEPTEMBER 13, 2012

[K.S. RADHAKRISHNAN AND MADAN B. LOKUR, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000 – s. 7A r/w. r. 12 of Juvenile Justice Rules, 2007 – C *Inquiry under – Nature, scope and ambit of – Claim of juvenility – Procedure to be followed – For determination of age – Held: Age determination inquiry is contemplated u/s. 7A r/w r. 12 – Therefore, such inquiry is an inquiry under the Act and to be conducted following the procedure u/r. 12 and* D *not following the procedure under Cr.P.C. – Age to be determined initially on the basis of the documents/certificates as indicated in r. 12(3)(a)(i)(ii) and (iii) – The question of obtaining medical opinion arises only if the documents/ certificates are unavailable or found to be fabricated or* E *manipulated – Once the court passes order determining the age of the juvenile following the procedure laid down u/s. 7A r/w r.12, that shall be conclusive proof as regards the age of that juvenile – In the instant case, the court examined the question of juvenility as if it was a criminal trial or inquiry under* F *Cr.P.C – The document produced to prove the date of birth was not refuted or rebutted by the opposite party – Hence rule 12(3)(a)(i)(ii) is complied with – The court wrongly ordered for medial opinion disbelieving the documents in support of date of birth of the juvenile – Juvenile Justice (Care and Protection of Children) Rules, 2007 – r. 12 – Code of Criminal* G *Procedure, 1973.*

Penal Code, 1860 – s. 320 r/w s.27 of Arms Act, 1959 – Prosecution under – Conviction and sentence of life imprisonment by trial court – Appeal pending before High

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Court – In the meantime, in an application u/ss. 6 and 7 of Juvenile Justice Act, Supreme Court finding that the accused was a juvenile – Sentence set aside – Direction to High Court to place the records before Juvenile Justice Board for awarding sentence in accordance with the Act of 2000 – Juvenile Justice (Care and Protection of Children) Act, 2000 – Arms Act, 1959 – s. 27.

Words and Phrases:

'inquiry', 'enquiry', 'investigation' and 'trial' – Meaning of, in the context of Cr.P.C. and Juvenile Justice (Care and Protection of Children) Act, 2000.

The appellant accused was prosecuted u/s. 302 IPC r/w s. 27 of Arms Act. During pendency of the trial, he moved an application u/ss. 6 and 7 of Juvenile Justice (Care and Protection of Children) Act, 2000, claiming to be a juvenile (i.e. below 18 years age on the date of the incident). In support of his date of birth, he produced mark-sheets of eighth standard and Higher Secondary Board examinations.

The court directed Ossification Test. As per the medical reports, the age of the accused was not below 18 years on the date of the incident. The court disbelieving the school records and relying on the medical evidence, dismissed the application.

Appellate court called for the original school records in order to ascertain the basis for entry of the date of birth, but disbelieving the same, dismissed the appeal. The order was confirmed by the High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 Courts below, while dealing with the claim of juvenility have not properly understood the scope of

A **the Juvenile justice (Care and Protection of Children) Act, 2000 particularly, meaning and content of Section 7A of the Act read with Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007. Section 7A, obliges the court only to make an *inquiry, not an investigation or a* B *trial*, an inquiry not under Cr.P.C. but under the Act. Criminal Courts, JJ Board, Committees etc., proceed as if they are conducting a trial, inquiry, enquiry or investigation as per Cr.P.C. Statute requires the Court or the Board only to make an 'inquiry' and in what manner C that inquiry has to be conducted is provided in 2007 Rules. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an D affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" E or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. [Paras 13, 27 and 28] [553-B; 561-B-G]**

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1.2. The *age determination inquiry* has to be completed and age be determined within thirty days from the date of making the application, which is also an indication of the manner in which the inquiry has to be conducted and G completed. The word 'inquiry' has not been defined under the Act, but Section 2(y) of the Act says that all words and expressions used and not defined in the Act but defined in Cr.P.C, shall have the meanings respectively assigned to them in that Code. [Para 28] H [561-G-H; 562-A]

1.3. The words inquiry'and investigation'have been defined in ss. 2(g) and 2(h) of Cr.P.C. respectively. The word "enquiry" is not defined under Cr.P.C. which is an act of asking for information and also consideration of some evidence, may be documentary. The expressions "trial" has also not been defined in Cr.P.C. but must be understood in the light of the expressions "inquiry" or "investigation" as contained in sections 2(g) and 2(h) of Cr.P.C. [Para 29] [562-C-G]

1.4. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating some offences committed. In very many cases the Court /the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) Cr.P.C. but an inquiry under the Act, following the procedure laid under Rule 12 and not following the procedure laid down under Cr.P.C. [Para 30] [562-G-H; 563-A-B]

1.5. Cr.P.C. makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under Cr.P.C. naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. Thus, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry. The procedure to be followed under the Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. One cannot import other procedures laid down in Cr.P.C. or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the

A court exercising powers under section 7A of the Act. [Paras 31 and 32] [563-B-F]

1.6. A duty is cast on all Courts/J.J. Board and the Committees functioning under the Act to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection. [Para 33] [563-G-H; 564-A]

1.7. "Age determination inquiry" contemplated u/s. 7A of the Act r/w 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 need 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 need 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 above mentioned 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. [Para 34] [564-A-E]

1.8. Once the court, following the above mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) of Rule 12 that no further inquiry shall be

conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the Act also draws a presumption of the age of the Juvenility on its determination. [Para 35] [564-E-G]

1.9. Age determination inquiry contemplated under the Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination. [Para 36] [564-G-H; 565-A-B]

1.10. Legislature and the Rule making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year. [Para 42] [568-B-C]

2.1. In the instant case, the court examined the question of juvenility of the appellant as if it was conducting a criminal trial or inquiry under Cr.P.C. After

A having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the appellant was born on 24.10.1990, the court should have B accepted the admission register produced by the principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, C which is evident from the proceedings recorded and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. The above document produced by the principal of the school D conclusively shows that the date of birth was 24.10.1990 hence section 12(3)(a)(i)(ii) has been fully satisfied. The appellant has successfully established his juvenility on the date of occurrence. [Paras 38, 40 and 46] [565-F; 567-E-G; 569-C]

E 2.2. The admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to F thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility. [Para 45] [569-A-B]

2.3. The appellant has already faced the criminal trial G and the court found him guilty along with two others under section 302 IPC and has been awarded life imprisonment which is pending in appeal, before the High Court. The accused is also involved in few other criminal cases as well. Since the appellant was a juvenile H on the date of the incident, the sentence awarded in

sessions case is set aside and the High Court is directed to place the records before J.J. Board for awarding appropriate sentence in accordance with the provisions of the Act, 2000 and if the appellant has already undergone the maximum sentence of three years as prescribed in the Act, he has to be let free, provided he is not in custody in any other criminal case. [Para 47] [569-E-G]

Babloo Parsi v. State of Jharkhand and Anr. **(2008) 13 SCC 133: 2008 (14) SCR 161;** *Shah Nawaz v. State of Uttar Pradesh and Anr.* **(2011) 13 SCC 751: 2011 (9) SCR 859 – relied on.**

Amit Das v. State of Bihar **(2000) 5 SCC 488: 2000 (1) Suppl. SCR 69;** *Pratap Singh v. State of Jharkhand* **(2005) 3 SCC 551: 2005 (1)SCR 1019 ;** *Hari Ram v. State of Rajasthan and Anr.* **(2009) 13 SCC 211: 2009 (7) SCR 623;** *Dharambir v. State (NCT of Delhi) and Anr.* **(2010) 5 SCC 344: 2010 (5) SCR 137;** *Mohan Mali and Anr. v. State of Madhya Pradesh* **(2010) 6 SCC 669;** *Jabar Singh v. Dinesh and Anr.* **(2010) 3 SCC 757: 2010 (3) SCR 353;** *Dayanand v. State of Haryana* **(2011) 2 SCC 224: 2011 (1) SCR 173 ;** *Anil Agarwal and Anr. v. State of West Bengal* **(2011) 2 SCALE 429 – referred to.**

Case Law Reference:

2000 (1) Suppl. SCR 69	**Referred to.**	**Para 14**
2005 (1) SCR 1019	**Referred to.**	**Para 14**
2009 (7) SCR 623	**Referred to.**	**Para 15**
2010 (5) SCR 137	**Referred to.**	**Para 17**
(2010) 6 SCC 669	**Referred to.**	**Para 19**
2010 (3) SCR 353	**Referred to.**	**Para 20**
2011 (1) SCR 173	**Referred to.**	**Para 22**

A	**(2011) 2 SCALE 429**	**Referred to.**	**Para 23**
	2008 (14) SCR 161	**Relied on.**	**Para 43**
	2011 (9) SCR 859	**Relied on.**	**Para 44**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1403 of 2012.

From the Judgment & Order dated 3.12.2010 of the High Court of Madhya Pradesh at Jabalpur in Criminal Revision No. 495 of 2009.

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Dinesh Kumar Garg for the Appellant.

Sidhartha Dave, Jemtiben AO (for Vibha Datta Makhija) for the Respondent.

D The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We notice that large number of cases are being brought before this Court against orders passed by the criminal courts, E on the claim of juvenility under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the J.J. Act') read with Rule 12 of The Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the 2007 Rules'), primarily for the reason that many of the criminal courts F are not properly appraised of the scope of enquiry contemplated under those statutory provisions. We find it appropriate in this case to examine the nature of inquiry contemplated under Section 7A of the J.J. Act read with Rule 12 of the 2007 Rules, for future guidance and application by G the Courts, Boards and the Committees functioning under the J.J. Act and Rules.

3. Before considering the above question and other related issues, we may examine, what transpired in the case on hand.

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Appellant – Ashwani Kumar Saxena and two others, namely, Jitender and Ashish were charge-sheeted for the offences punishable under Section 302 of the Indian Penal Code (for short 'the IPC') read with Section 27 of Arms Act and Section 302 IPC read with Section 34 of the IPC, respectively, for an offence committed on 19.10.2008 at 12.30 am in front of Krishna Restaurant, Chhatarpur which resulted in the death of one Harbal Yadav for which Sessions Case No.28/09 was pending before the First Additional Sessions Judge, Chhatarpur, Madhya Pradesh (M.P.). On 11.11.2008 the appellant filed an application before Chief Judicial Magistrate (CJM) Court, Chhatarpur under Sections 6 and 7 of the J.J. Act claiming that he was juvenile on the date of the incident and hence, the criminal court had no jurisdiction to entertain this case and the case be referred to Juvenile Justice Board and he be granted bail.

4. The appellant stated that his date of birth is 24.10.1990 and hence on the date of the incident i.e. on 19.10.2008, he was aged only 17 years, 11 months and 25 days and was thus a juvenile. In support of this contention, he produced the attested mark sheets of the High School of the Board of Secondary Education, M.P. Bhopal as well as Eighth standard Board Examination, wherein the date of birth was mentioned as 24.10.1990.

5. Smt. Kiran, widow of victim raised objection to the application contending that no evidence had been adduced to show that the entry made in the school Register was correct and normally parents would not give correct date of birth on the admission Register. Further, it was also stated that on physical appearance, as well, he was over 21 years of age and therefore the application be dismissed. Ram Mohan Saxena, father of the appellant, was examined as PW1 and he deposed that the date of birth of his son was 24.10.1990 and that he was born in the house of Balle Chaurasia in Maharajpur and his son was admitted in Jyoti Higher Secondary School, wherein his date

A of birth was also entered as 24.10.1990. Reference was also made to the transfer certificate issued by the above-mentioned school, since the appellant had studied from 8th standard to 10th standard in another school, namely, Ceiling Home English School. Further reliance was also placed on a horoscope, which B was prepared by one Daya Ram Pandey, marked as exhibit P-4. Savitri Saxena, the mother of the appellant was also examined as PW-4, who also deposed that his son was born on 24.10.1990 and had his education at Jyoti Higher Secondary School and the School Admission Register kept in C the school would also indicate his correct date of birth.

6. The C.J.M. court thought of conducting an ossification test for determination of the age of the appellant. Dr. R.P. Gupta, PW-2 conducted age identification of the body of the appellant by X ray and opined that epiphysis of wrist, elbow, D knee and iliac crest was fused and he was of the opinion that the appellant was more than 20 years of age on 14.11.2008 and a report exhibited as P-5 was submitted to that extent. Dr. S.K. Sharma, Medical Officer, District Hospital, Chhatarpur was examined as PW-3, who conducted teeth test on the appellant E for age identification. PW-3 had found that all 32 teeth were there including all wisdom teeth, so the age of the appellant was more than 21 years.

7. Dr. R.P. Gupta (PW-2) and Dr. S.K. Sharma (PW-3) F were cross-examined by the counsel for the appellant. Dr. R.P. Gupta (PW-2) stated that there might be margin of 3 years on both side while Dr. S.K. Sharma (PW-3) had denied the said statement and he was of the opinion that wisdom teeth never erupt before the age of 17 years and might be completed upto G the age of 21 years. Dr. S.K. Sharma (PW-3) concluded since all four wisdom teeth were found erupted, the appellant would be more than 21 years as on 14.11.2008.

8. The C.J.M. Court felt that school records including mark sheets etc. cannot be relied upon since teacher, who entered H those details, was not examined and stated as follows:

"The date of birth mentioned in all the certificates is 24.10.1990. But it is significant that such date of birth was recorded on the basis of the date of birth disclosed by the father while getting him admitted in the school and neither the school admission form, admission register in original were called for and even statement of no teacher, who got admitted in the school, was got recorded in the court to determine on the basis of which document actually the date of birth was got recorded as per the principle of law laid down by the Honourable Supreme Court that the date of birth should be relied only when it was recorded in the school on the basis of our authenticated documents and the parents used to get the date of birth of the children recorded for some with variation for some benefit and therefore same cannot be held as authenticated."

9. The C.J.M., therefore, placing reliance on the report of the ossification test took the view that the appellant was more than 18 years of age on the date of the incident. Consequently, the application was dismissed vide order dated 1.01.2009. The appellant aggrieved by the above mentioned order filed Criminal Appeal No. 15 of 2009 before the First Additional Sessions Judge, Chhatarpur.

10. The appellant again placed considerable reliance on school records including mark sheets, transfer certificate etc. and submitted that the reliance placed on the odontology report was wrongly appreciated to determine the age of the appellant.

The First Additional Sessions Judge stated as follows:

"On the perusal of entire record it appears that the evidence of Ram Mohan Saxena who is father of the appellant is not reliable as he says that the date of birth of appellant was mentioned by him at the time of admission in school on the basis of Horoscope. It does not bear the date when it was prepared. Papers of the Horoscope are crispy. *The Pandit who prepared the Horoscope was not*

A *examined for the reason best known to the appellant. Therefore, the best evidence has been withheld by the appellant. Therefore, adverse inference is to be drawn against the appellant. The Horoscope is manufactured and fabricated and tailored for ulterior motive."*

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(emphasis added)

11. The First Additional Sessions Judge though summoned the original register of Jyoti English School, wanted to know on what basis the date of birth of the appellant was C entered in the School Admission Register. PW1, the father of the appellant had therefore to rely upon the horoscope on which First Additional Sessions Judge has commented as follows:

"Horo-Scope was found to be recently made which does D not mention the date when it was prepared and it appears to be recently made and original register of the Jyoti Higher Secondary School also does not mention that on what basis the date of birth of the appellant was recorded first time in the school register. Therefore, the version of the E Ram Mohan Saxena that the date of birth of the appellant was recorded on the basis of *Horoscope is not supported by the register No.317 of the school. The Horoscope does not bear the date when it was prepared. It appears to be recently made. The original school admission form and the person who made the entries first time in the* F *school has not been examined in this Court. Therefore, no credence can be given to such entry in the school."*

(emphasis added)

G 12. Learned First Additional Sessions Judge, on the above reasoning, dismissed the appeal though the Principal of Jyoti Higher Secondary School himself had appeared before the Court with the School Admission Register, which showed the date of birth as 24.10.1990. Aggrieved by the same, the H appellant approached the High Court and the High Court

confirmed the order passed by the C.J.M. Court as well as the First Additional Sessions Judge stating that the appellant had failed to establish his onus that his age was below 18 years on the date of the incident.

13. We are unhappy in the manner in which the C.J.M. Court, First Additional Sessions Judge's Court and the High Court have dealt with the claim of juvenility. Courts below, in our view, have not properly understood the scope of the Act particularly, meaning and content of Section 7A of the J.J. Act read with Rule 12 of the 2007 Rules Before examining the scope and object of the above mentioned provisions, it will be useful to refer some of the decided cases wherein the above mentioned provisions came up for consideration, though on some other context.

14. In *Amit Das v. State of Bihar* , [(2000) 5 SCC 488], this Court held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. In Amit Das case, this Court has taken the view that the date of production before the Juvenile Court was the date relevant in deciding whether the appellant was juvenile or not for the purpose of trial. The law laid down in Amit Das to that extent was held to be not good law, in *Pratap Singh v. State of Jharkhand* [(2005) 3 SCC 551], wherein a five Judge Bench of this Court decided the scope of sections 32 and 2(h), 3, 26, 18 of the Juvenile Justice Act, 1986 and took the view that it was the date of the commission of the offence and not the date when the offender was produced before the competent court was relevant date for determining the juvenility.

15. In *Pratap Singh* case, this Court held that section 20

A of the Act would apply only in cases in which accused was below 18 years of age on 01.04.2001 i.e. the date of which the 2000 Act came into force, but it would have no application in case the accused had attained the age of 18 years on date of coming into force of the 2000 Act. Possibly to get over the rigor
B of Pratap Singh, a number of amendments were introduced in 2000 Act w.e.f 28.02.2006 by Act 33 of 2006, the scope of which came up for consideration in *Hari Ram v. State of Rajasthan and Another* [(2009) 13 SCC 211]. In Hari Ram, this court took the view that the Constitution Bench judgment in
C Pratap Singh case was no longer relevant since it was rendered under the unamended Act. In *Hari Ram* while examining the scope of Section 7A of the Act, this Court held that the claim of juvenility can be raised before any court at any stage and such claim was required to be determined in terms
D of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. It was held that a juvenile, who had not completed 18 years of age on the date of commission of the offence, was also entitled to the benefits of Juvenile Justice Act, 2000 as the provisions of section 2(k)
E had always been in existence even during the operation of the 1986 Act.

16. Further, it was also held that on a conjoint reading of sections 2(k), 2(l), 7A, 20 and 49 r/w Rules 12 and 98 places
F 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
G undergoing sentence upon being convicted. With regard to the determination of age, this Court held that the determination of age has to be in the manner prescribed in Rule 12 of the 2007 Rules and opined that the determination of age is an important responsibility cast upon the Juvenile Justice Boards.

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17. The scope of Section 7A of the Act and Rule 12 of the 2007 Rules again came up for consideration before this Court in *Dharambir v. State (NCT of Delhi) and Another* [(2010) 5 SCC 344]. That was a case where the appellant was convicted for offences under section 302/34 and 307/34 IPC for committing murder of one of his close relatives and for attempting to murder his brother. The appellant was not a juvenile within the meaning of 1986 Act, when the offences were committed but had not completed 18 years of age on that date. A B

18. This court held from the language of the Explanation to Section 20 that in all pending cases, which would include not only trial but even subsequent proceedings by way of revision or appeal etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April 2001, when the Act of 2000 came into force, and the provisions of the Act would have applied as if the said provision had been in full force for all purposes and for all material times when the alleged offence was committed. This Court held clause (l) of Section 2 of the Act 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of the commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the Court, while maintaining the conviction to set aside the sentence imposed and forward the case to the J.J Board concerned for passing sentence in accordance with the provisions of the 2000 Act. C D E F

19. This Court in *Mohan Mali and Another v. State of Madhya Pradesh* [(2010) 6 SCC 669] has again considered the scope of Section 7A of the Act. That was a case where plea of juvenility was raised before this court by the convict undergoing sentence. The appellant therein was convicted under sections 302/34, 326/34 and 324/34 IPC and was G H

A sentenced to life imprisonment and had already undergone 9 years of imprisonment. In that case a copy of the birth certificate issued by the Chief Registrar (Birth and Death) Municipal Corporation, Dhar u/s 12 of the Birth and Death Registration Act 1969 maintained by the Corporation was produced. This B Court noticed that as per that certificate the date of birth of the accused was 12.11.1976. After due verification, it was confirmed by the State of Madhya Pradesh that he was a juvenile on the date of commission of the offence and had already undergone more than the maximum sentence provided C under Section 15 of the 2000 Act by applying Rule 98 of the 2007 Rules read with Section 15 and 64 of the 2000 Act. The accused was ordered to be released forthwith.

20. In *Jabar Singh v. Dinesh and Another* [(2010) 3 SCC 757], a two Judge Bench of this Court while examining the D scope of Section 7A of the Act and Rule 12 of the 2007 Rules and Section 35 of the Indian Evidence Act took the view that the trial court had the authority to make an enquiry and take necessary evidence to determine the age. Holding that the High Court was not justified in exercise of its revisional jurisdiction E to upset the finding of the trial court, remitted the matter to the trial court for trial of the accused in accordance with law treating him to be not a juvenile at the time of commission of the alleged offence. The court noticed that the trial court had passed the order rejecting the claim of juvenility of respondent No.1 therein F on 14.02.2006, the Rules, including Rule 12 laying down the procedure to be followed in determination of the age of a juvenile in conflict with law, had not come into force. The court opined that the trial court was not required to follow the procedure laid down in Section 7A of the Act or Rule 12 of the G Rules and therefore in the absence of any statutory provision laying down the procedure to be followed in determining a claim of juvenility raised before it, the Court had to decide the claim of juvenility on the materials or evidence brought on record by the parties and section 35 of the Evidence Act.

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21. The court further stated that the entry of date of birth of respondent No.1 in the admission form, the school records and transfer certificates did not satisfy the condition laid down in Section 35 of the Evidence Act in as much as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and therefore, the entry was not relevant under section 35 of the Evidence Act for the purpose of determining the age of respondent no.1 at the time of commission of the alleged offence. We have our own reservations on the view expressed by the bench in *Jabar Singh's* case. (supra).

22. In *Dayanand v. State of Haryana* [(2011) 2 SCC 224]., this Court considered the scope of sections 2(k), 2(l), 7-A 20 and 64 (as amended by Act 33 of 2006 w.e.f. 22.08.2006]. This Court dealt with a case where the appellant was aged 16 years 5 months and 19 days on the date of occurrence, the Court held that he was a juvenile and thus could not be compelled to undergo the rigorous imprisonment as imposed by the trial court and affirmed by High Court. This Court set aside the sentence and ordered that the appellant be produced before the J.J. Board for passing appropriate sentence in accordance with 2000 Act.

23. In *Anil Agarwal and Another v. State of West Bengal* [(2011) 2 SCALE 429], this Court was examining the claim of juvenility made at a belated stage stating that the appellants were minors at the time of the alleged offence and hence should not be tried along with the adult co-accused. The trial court dismissed the appellant's application as not maintainable as it had been filed at a belated stage. The High Court, in revision, while holding that the application had been made belatedly, granted liberty to appellants to raise their plea of juvenility and to establish the same before the Sessions Judge at the stage of the examination under section 313 Cr.P.C.

24. Reversing the finding recorded by the High Court, this

A Court took the view that Section 7A of the Act, as it now reads, gives right to any accused to raise the question of juvenility at any point of time and if such an issue is raised, the Court is under an obligation to make an inquiry and deal with that claim. The court held Section 7A has to be read along with Rule 12 B of the 2007 Rules. This Court, therefore, set aside the order of the High Court and directed the trial court to first examine the question of juvenility and in the event, the trial court comes to a finding that the appellants were minors at the time of commission of the offence, they be produced before the J.J. C Board for considering their cases in accordance with the provisions of the 2000 Act.

25. We may in the light of the judgments referred to herein before and the principles laid down therein while examining the scope of Section 7 A of the Act, Rule 12 of the 2007 Rules and D Section 49 of the Act examine the scope and ambit of inquiry expected of a court, the J.J. Board and the Committee while dealing with a claim of juvenility.

26. We may, however, point out that none of the above E mentioned judgments referred to earlier had examined the scope, meaning and content of Section 7A, Rule 12 of the 2007 Rules and the nature of the inquiry contemplated in those provisions. For easy reference, let us extract Section 7A of the Act and Rule 12 of the 2007 Rules:

F *"Section 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 G 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 H 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."

Rule 12. Procedure to be followed in determination of Age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

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

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

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

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

A (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
B 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
C 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
D 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.

E (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order
F stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is
G required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

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(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in subrule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

(emphasis added)

27. Section 7A, obliges the court only to make an *inquiry, not an investigation or a trial,* an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

28. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The

A word 'inquiry' has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

B

29. Let us now examine the meaning of the words inquiry, enquiry, investigation and trial as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions.

C "Inquiry" as defined in Section 2(g), Cr.P.C. reads as follows:

"Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

D The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

E "Investigation" as defined in section 2(h), Cr.P.C. reads as follows:

"Investigation includes all the proceedings under this code for the collection of evidence conducted by a police officer
F or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

The expressions "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained
G in sections 2(g) and 2(h) of the Code of Criminal Procedure."

30. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case
H for the purpose of rendering the judgment relating some

offences committed. We find in very many cases that the Court /the J.J. Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the J.J. Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

31. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

32. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in section 7A read with Rule 12.

33. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a

A parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

34. "Age determination inquiry" contemplated under section 7A of the Act r/w 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 need 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 need 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 above mentioned 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.

35. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

36. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate

from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

37. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

38. We notice that none of the above mentioned principles have been followed by the courts below in the instant case. The court examined the question of juvenility of the appellant as if it was conducting a criminal trial or inquiry under the Code. Notice was issued on the application filed by the juvenile and in response to that State as well as the widow of the victim filed objection to the application. The father of the appellant was cross examined as PW 1 and was permitted to produce several documents including the mark sheet of class five marked as exhibit P-1, mark sheet of class eight marked as exhibit P-2, mark sheet of Intermediate Education Board, MP, marked as exhibit P-3, horoscope prepared by Daya Ram Pandey marked as exhibit P-4. Further, the mother of the appellant was examined as PW 4, Transfer Certificate was produced on the side of the appellant which was marked as

A exhibit P-6. Noticing that the parents of the appellant were attempting to show a lesser age of the child so as to escape from the criminal case, the Court took steps to conduct ossification test. Dr. R.P. Gupta was examined as PW 2 who had submitted the report. Dr. S.K. Sharma was examined as
B PW 3. Placing considerable reliance on the report submitted after conducting ossification test, the application was dismissed by the trial court.

39. We find that the appellate court, of course, thought it necessary to summon the original register of Jyoti English
C School where the appellant was first admitted and the same was produced by the Principal of the School. We have called for the original record from the Court and perused the same. On 4.09.2009, the Sessions Judge passed the following order:

D 04.02.09. Court found it necessary to call for the Admission Register of the appellant in Jyoti High Secondary School and ordered the production of the Register of Admission, from the concerned school in ST. No. 29/09.

E Sd/-
Judge

On 09.02.2009, another order was passed as follows:

F *From Jyoti High Secondary School, the Principal of the school was present along with the concerned admission register. He produced the copy of the admission register before the court after proving its factum.* Register was returned after the perusal. The Counsel is directed that if
G he wants to produce any other evidence/documents, he may do so.

(emphasis added)
Sd/-
Judge

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On 11.02.09, after hearing the counsel on either side, the Court passed the order:

The counsel for the state *Shri Nayak, APG stated/ conceded that in respect to refute/rebuttal of the Admission Register the state do not wish to file further Evidence/documents.*

(emphasis added)
Sd/-
Judge

On 12.02.2009, after hearing counsel on either side, the Court again passed the order:

In presence of the advocates, order pronounced in the open court that this Appeal is hereby Dismissed.

Sd/-
Judge

40. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the appellant was born on 24.10.1990, what prompted the Court not to accept that admission register produced by the principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11.02.2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. We are of the view the above document produced by the principal of the school conclusively shows that the date of birth was 24.10.1990 hence section 12(3)(a)(i)(ii) has been fully satisfied.

41. The Sessions Judge, however has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the

A appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial courts and the appellate courts, when the B question regarding the claim of juvenility is raised.

42. Legislature and the Rule making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the C juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

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43. The Court in *Babloo Parsi v. State of Jharkhand and Another* [(2008) 13 SCC 133] held, in a case where the accused had failed to produce evidence/certificate in support of his claim, medical evidence can be called for. The court held that the medical evidence as to the age of a person, though a E useful guiding factor is not conclusive and has to be considered along with other cogent evidence. This court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to re-determine the age of the accused.

F

44. In *Shah Nawaz v. State of Uttar Pradesh and Another* [(2011) 13 SCC 751], the Court while examining the scope of Rule 12, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the G school first attended or any birth certificate issued by a Corporation or a municipal authority or a panchayat or municipal is not available. The court had held entry related to date of birth entered in the mark sheet is a valid evidence for determining the age of the accused person so also the school

H

leaving certificate for determining the age of the appellant. A

45. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking B that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

46. We are, therefore, of the view that the appellant has successfully established his juvenility on the date of occurrence C of the crime i.e. 19.10.2008 on which date he was aged only 17 years 11 months 25 days. The appellant has already faced the criminal trial in sessions case No. 28 of 2009 and the Court found him guilty along with two others under section 302 IPC and has been awarded life imprisonment which is pending in D appeal, before the Hon'ble Court at Jabalpur as Crime Appeal No. 1134 of 2009.

47. We notice that the accused is also involved in few other criminal cases as well. Since we have found that the appellant was a juvenile on the date of the incident, in this case, we are E inclined to set aside the sentence awarded in sessions case No. 28/2009 by Sessions Court and direct the High Court to place the records before J.J. Board for awarding appropriate sentence in accordance with the provisions of Act, 2000, and if the appellant has already undergone the maximum sentence F of three years as prescribed in the Act, needless to say he has to be let free, provided he is not in custody in any other criminal case. We are informed that the appellant is involved in few other criminal cases as well, those cases will proceed in accordance with law. G

48. The appeal is allowed. Sentence awarded by the court below is accordingly set aside and the case records be placed before the concerned J.J. Board for awarding appropriate sentence.

K.K.T. Appeal allowed. H