REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 207 OF 2022
(ARISING OUT OF SLP (CRIMINAL) NO. 8423 OF 2019)

Manoj @ Monu @ Vishal Chaudhary .....APPELLANT(S)

VERSUS

State of Haryana & Anr. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Punjab and Haryana at Chandigarh dated 30.07.2019, whereby an order passed by the learned Additional Sessions Judge, Fatehabad declaring the present appellant as juvenile in conflict with law was set aside and the appellant was ordered to stand trial as an adult.

2. The facts relevant for the determination of the present appeal are that the appellant was arrayed as an accused in respect of an occurrence on 18.01.2011, wherein the allegation against the appellant was that

he waylaid a car and snatched Rs. 22 lacs from the occupants of the car. The complainant was one of the occupant of the car, whereas, another occupant - Bhim Singh lost his life on account of bullet fired on him. During the pendency of the trial, the appellant moved an application on 07.10.2014 claiming that he was a juvenile as on the date of the incident, relying upon his school record disclosing his date of birth as 13.05.1993. The learned Additional Sessions Judge accepted the plea of the appellant and declared him to be juvenile vide order dated 09.01.2015. Such order was challenged before the High Court by way of a revision petition. The revision was allowed on 04.05.2016 and the matter was remitted back to the trial court for adjudicating afresh.

3. The learned Additional Sessions Judge, after remand, found the appellant to be 16 years 8 months and 5 days old on the date of incident as per the Ossification Test report. The age of the appellant as assessed by the Board of Doctors in the report was 23-24 years. The High Court however while setting aside the order of the learned Additional Sessions Judge relied upon the family register prepared under The U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1970[1] to hold that the appellant's plea of juvenility cannot be allowed. Such order is the subject matter of challenge in the present appeal.

4. The procedure to be followed for determination of age is provided under Rule 12(3)(b) of the Juvenile Justice (Care and Protection of

1 For short, 'Family Register Rules'

Children) Rules, 2007[2], which reads as:

> "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-
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> (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
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> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
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> (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
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> (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year
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> and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. "

2 For short, the 'Rules'

5. The Juvenile Justice (Care and Protection of Children) Act, 2000[3] stands repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015[4]. The procedure for determining the age is now part of Section 94 of 2015 Act which was earlier provided under abovementioned Rule 12 of the Rules.

6. Admittedly, there is no matriculation or equivalent certificate as contemplated under Rule 12(3)(a)(i). The appellant relied upon date of birth certificate issued by the school first attended. The learned Additional Sessions Judge on the other hand relied upon report Exhibit AW1/A rendered by the Board of Doctors on the basis of Ossification Test report dated 13.05.2016 wherein the age of the appellant was found to be 23 to 24 years. The learned Additional Sessions Judge gave the benefit of variation and determined the age as 22 years on the date of report and thus he was found to be 16 years 8 months and 5 days old. Still further, the appellant was found entitled to additional benefit of one year in terms of Rule 12(3)(b) of the Rules, therefore, the appellant was held to be juvenile in conflict with law. The learned Additional Sessions Judge has not relied upon the school leaving certificate or the date of birth certificate relied upon by the appellant.

7. The appellant relies upon three documents such as a Birth Certificate; School leaving Certificate and the Report of the Ossification Test in support of his plea of being a juvenile, whereas the State relies upon

3 2000 Act
4 2015 Act

the family register prescribed by the Family Register Rules.

i. Birth Certificate

8. First, we shall examine the truthfulness of the birth certificate issued by the Government of Uttar Pradesh wherein the date of birth is mentioned as 13.05.1993. Such date of birth was registered on 19.11.2014 after the filing of the application under Section 7A of the Act on 7.10.2014.

9. We find that such date of birth certificate has been arranged to claim benefit under the 2000 Act. The date of birth certificate produced by the appellant cannot be relied upon as it was obtained after filing of the application under Section 7A of the Act on 7.10.2014. As per the birth certificate, the appellant was born at house. Therefore, in terms of Section 8(1)(a) and 10(1)(i) of the Registration of Births and Deaths Act, 1969[5], birth had to be reported to the Registrar by the head of the household or by the nearest relative of the head present in the house or by the oldest adult male person present. In case birth is reported within 30 days, it shall be registered on payment of such late fee as may be prescribed. There are other conditions for registration of birth after 30 days as well. The relevant provisions of the Act read thus:

> "8**. Persons required to register births and deaths**.-(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by

5 Registration Act

the State Government under sub-section (1) of section 16-

(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e), the head of the house or, in case more than one household live in the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

xxx xxx xxx

10. **Duty of certain persons to notify births and deaths and to certify cause of death**.-(1) It shall be the duty of-

(i) the midwife or any other medical or health attendant at a birth or death,

(ii) the keeper or the owner of a place set apart for the disposal of dead bodies or any person required by a local authority to be present at such place, or

(iii) any other person whom the State Government may specify in this behalf by his designation.

to notify every birth or death or both at which he or she attended or was present, or which occurred in such areas as may be prescribed, to the Registrar within such time and in such manner as may be prescribed."

10. Therefore, the Courts have rightly not relied upon date of birth certificate which was granted on 19.11.2014 as it was obtained after filing of the application and registered many years after the birth and not immediately or within the prescribed time period.

ii. School Leaving Certificate

11. The school leaving certificate (Ex. A-3) has been proved by examining Umesh Kumar, Head Teacher of Adarsh Siksha Sadan, Pinna. As per the

statement of the witness, the school was functioning in the year 1999 in Village Kheri, Dudadhari and was shifted to Village Pinna in the year 2009-2010 where he had been working as Head Teacher from the year 2000. As per the certificate, the appellant was a student of such school from 12.7.1999 till 2.7.2003. In cross-examination, he admits that the school is a private school and the father of the appellant has not produced any certificate of the appellant attending the first class. The appellant was admitted directly in the 2nd standard. He admits that Exhibit A-1, the admission form, is a loose sheet prepared in his handwriting and it does not bear any counter signature of any higher authority. He has not even produced any proof of registration of the school with the Education Department.

12. The so-called admission form was filled up by him in 1999, so was the school leaving certificate of the year 2003. A perusal of the school leaving certificate shows that it was issued on 29.9.14 by Principal of Adarsh Siksha Sadan, Village Kheri, Dudadhari, though the school had shifted to Village Pinna in the year 2009-2010. It is unclear and amusing as to how a certificate be issued by a particular school which has been shifted to another village. This makes the process of issuance of certificate doubtful.

13. On the other hand, Ex R-1 is the certificate produced by the State stating that no school exists by the name of Adarsh Siksha Sadan in the village Kheri, Dudadhari. Such certificate has been issued by

Kanishkvir Singh of Primary School, Kheri.

14. The learned Additional Sessions Judge or the High Court have not relied upon such certificate. We find that such school leaving certificate is unreliable and that the certificate is only a procured document for proving juvenility before the court.

iii. Ossification Test Report

15. The Medical Board has opined the age of the appellant between 23 to 24 years, when the appellant was examined on 13.05.2016. This report has been relied upon by the learned Additional Sessions Judge to allow the plea of juvenility raised by the appellant. However, it is to be noted that ossification test varies based on individual characteristics and hence its reliability has to be examined in each case.

16. A textbook of Medical Jurisprudence and Toxicology by Modi, 26th Edition, pg. 221, delineates the factors relevant to determining the age-

(1) Height and Weight- it is opined that progressive increase in height and weight according to age varies so greatly in individuals that it cannot be depended upon in estimating age in medico-legal cases.

(2) Ossification of Bones- this sign is helpful for determining the age until ossification is completed, for skiagraphy has now made it possible to determine even in living persons, the extent of ossification, and the union of epiphysis in bones.

17. Hence, it cannot be reasonably expected to formulate a uniform standard for determination of the age of the union of epiphysis on account of variations in climatic, dietetic, hereditary and other factors affecting the people of the different States of India.

18. Furthermore, this Court in a judgment reported as ***Jyoti Prakash Rai*** v. ***State of Bihar***[6] held that the medical report determining the age of a person has never been considered by courts of law as also by the medical scientist to be conclusive in nature. It was also found that though the Act is a beneficial legislation but principles of beneficial legislation are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. The Court held as under:

> "12. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on record by the parties. In the absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.
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> 13. A medical report determining the age of a person has never been considered by the courts of law as also by the medical scientists to be conclusive in nature. After a certain age it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests. This

6 (2008) 15 SCC 223

Court in Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] opined : (SCC p. 290, para 20)

> "20. It is urged before us by Mr Lalit that the determination of the age of the prosecutrix by conducting ossification test is scientifically proved and, therefore, the opinion of the doctor that the girl was of 18-19 years of age should be accepted. We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact."

In the aforementioned situation, this Court in a number of judgments has held that the age determined by the doctors should be given flexibility of two years on either side."

19. In a judgment reported as ***Mukarrab*** v. ***State of U.P.***[7], it was observed that a blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by the radiological examination. It was also held that the purpose of 2000 Act is not to give shelter to the accused of grave and heinous offences. Relying upon judgment of this Court reported as ***Abuzar Hossain*** v. ***State of West Bengal***[8] and ***Parag Bhati*** v. ***State of Uttar Pradesh***[9], it was held as under:

> "27. In a recent judgment, State of M.P. v. Anoop Singh [State of M.P. v. Anoop Singh, (2015) 7 SCC 773 : (2015) 4 SCC (Cri) 208] , it was held that the ossification test is not the sole criteria for age determination. Following Babloo Pasi [Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266] and Anoop Singh cases [State of M.P. v. Anoop Singh, (2015) 7 SCC 773 : (2015) 4 SCC (Cri) 208] , we hold that ossification test

7 (2017) 2 SCC 210
8 (2012) 10 SCC 489
9 (2016) 12 SCC 744

> cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. In fact in the medical report of the appellants, it is stated that there was no indication for dental x-rays since both the accused were beyond 25 years of age."

20. This Court in a judgment reported as ***Babloo Pasi*** v. ***State of Jharkhand and Anr***.[10] held that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It was held as under:

> "22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence."

21. In ***Ramdeo Chauhan*** v. ***State of Assam***[11], it was held that X-Ray Ossification Test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate test so as to indicate the exact date of birth of the person concerned. It was held as under:

> "21. Relying upon a judgment of this Court in Jaya Mala v. Home Secy., Govt. of J&K [(1982) 2 SCC 538 : 1982 SCC (Cri) 502 : AIR 1982 SC 1297 : 1982 Cri LJ 1777] the learned defence counsel submitted that the Court can take notice that the marginal error in age ascertained by radiological examination is two years on either side. The aforesaid case is of no help to the accused inasmuch as in that case the Court was dealing with the age of a detenu taken in preventive custody and was not determining the extent of sentence to be awarded upon conviction of an

10 (2008) 13 SCC 133
11 (2001) 5 SCC 714

> offence. Otherwise also even if the observations made in the aforesaid judgment are taken note of, it does not help the accused in any case. The doctor has opined the age of the accused to be admittedly more than 20 years and less than 25 years. The statement of the doctor is no more than an opinion, the court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform."

22. It is pertinent to note here that Dr. Rajeev Chauhan, Member of the Medical Board in his cross-examination admitted that a man with the age of 30 to 32 years would also find the same fusion as found in a man who has crossed the age of 22 years. Keeping in view the said statement, we find that the conclusion of the Medical Board that the appellant was 23 to 24 years cannot be said to be conclusive or helpful to determine the age of the appellant to be less than 18 years on the date of commission of offence.

iv. Family Register

23. The Family Register Rules prescribes preparation of a Family Register in the State of Uttar Pradesh which contains family-wise names and particulars of all persons ordinarily residing in the village pertaining to

the Gaon Sabha. Such Rules have been framed under Section 110 of the U.P Panchayat Raj Act, 1947. The High Court has relied on such certificate to hold that the appellant is not juvenile. Such Rules read as under:

> “1. (1) These rules may be called the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970.
>
> 2. Form and preparation of family register.- A family register in form A shall be prepared containing family-wise the names and particulars of all persons ordinarily residing in the village pertaining to the Gaon Sabha. Ordinarily one page shall be allotted to each family in the register. There shall be a separate section in the register for families belonging to the Scheduled Castes. The register shall be prepared in Hindi in Devanagri scrip.
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> 3. General conditions for registration in the register.- Every person who has been ordinarily resident within the area of the Gaon Sabha shall be entitled to be registered in the family register.
> Explanation.- A person shall be deemed to be ordinarily resident in a village if he has been ordinarily residing in such village or is in possession of a dwelling house therein ready for occupation.
>
> 4. Quarterly entries in the family register.- At the beginning of each quarter commencing from April in each year, the Secretary of a Gaon Sabha shall make necessary changes in the family register consequent upon births and deaths, if any occurring in the previous quarter in each family. Such changes shall be laid before the next meeting of the Gaon Panchayat for information.
>
> 5. Correction of any existing entry.- The Assistant Development Officer (Panchayat) may on an application made to him in this behalf order the correction of any existing entry in the family register and the Secretary of the Gaon Sabha shall then correct the Register accordingly.
>
> 6. Inclusion of names in the Register.- (1) Any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) for the inclusion of

his name therein.

(2) The Assistant Development Officer (Panchayat) shall, if satisfied, after such enquiry as he thinks fit that the applicant is entitled to be registered in the Register, direct that the name of the applicant be included therein and the Secretary of the Gaon Sabha shall include the name accordingly.

6A Any person aggrieved by an order made under Rule 5 or Rule 6 may, within 30 days from the date of such order prefer and appeal to the Sub-Divisional Officer whose decision shall be final.

7. Custody and preservation of the register.-(1) The Secretary of the Gaon Sabha shall be responsible for the safe custody of the family register.
(2) Every person shall have a right to inspect the Register and to get attested copy of any entry or extract therefrom in such manner and on payment of such fees, if any, as may be specified in Rule 73 of the U.P. Panchayat Raj Rules.

FORM A
(See RULE 2)

xxx xxx xxx

Note.- In the remarks column the number and date of the order, if any, by which any name is added or struck off should be given alongwith the signature of the person making the entry."

24. A perusal of the Rules shows that one page is allotted to each family and that any change in the family consequent upon the births and deaths is required to be incorporated on such page. The changes are also required to be laid before the next meeting of Gram Panchayat. Thus, it is evident that such Rules are statutorily framed in pursuance of an Act. The entries in the register are required to be made by the officials of the Gram Panchayat as part of their official duty. Neeraj

Kumar, Gram Panchayat Officer of Block Barwala was examined wherein he stated that the entries in the register are made on the basis of information given by the family members, though he could not depose as to who had made these entries.

25. Jagpal Singh, father of the appellant, had appeared as a witness to depose that the appellant was born on 13.5.1993. He deposed that after the birth of the appellant, a daughter was born on 15.4.1996 and thereafter a son on 21.9.1997. The High Court relied upon Family Register (Exhibit R-4) produced by Neeraj Kumar, RW-2, wherein the year of birth of the appellant was mentioned as 1990 and 1996 as the year of birth of daughter and 1998 as the year of birth of another son. The years of birth of the brother and sister of the appellant are almost the same as deposed by the father. The High Court found that such document cannot be excluded from consideration for the reason as such document has been prepared in the ordinary course of business of the Gram Panchayat.

26. Mr. Bhargava, learned Senior Counsel for the appellant contends that the family register cannot be made basis of determining the age of the juvenile under the provisions of the Act and the Rules framed thereunder. To support such contention, reliance was placed on the judgments of the Allahabad High Court such as ***Hare Ram Chowdhary*** v. ***State of U.P.***[12]; ***Anil Kumar*** v. ***Suchita***[13]***;*** ***Bahadur*** v.

12 1989 SCC OnLine ALL 438
13 2009 SCC OnLine ALL 671

State of U.P.[14]; ***Abdul Hakeem Pardhan and Others*** v. ***State of U.P.***[15] and ***Ram Murti Devi*** v. ***State of U.P. and Others***[16].

27. ***Hare Ram Chowdhary*** is an order referring the matter to the Full Bench as to whether the decision of that Court in ***Pramod Kumar Manglik*** v. ***Smt. Sadhana Rani***[17] is correctly decided. Since no issue has been finally directed, therefore any observations in the reference order are not relevant.

28. In ***Anil Kumar***, the dispute related to an election petition regarding date of birth of a candidate named Suchita. She claimed herself to be born on 03.07.1984 as against the date of birth entry in the school records. The family register was relied upon to prove the date of death of her mother. The learned Single Judge Bench held that the family register is only a document showing the names of the members of the family and they are ordinarily resident of a village concerned. It cannot be conclusive proof either of the date of birth or of death of any family member mentioned therein.

29. In ***Bahadur***, the accused relied upon entries in the family register to declare him as juvenile, relying upon U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004. The High Court rejected the family register on the ground that the entry produced was on the basis of register prepared in the year 2000 which was prepared on the basis of

14 2009 SCC OnLine ALL 1757
15 2015 SCC OnLine ALL 5201
16 2021 SCC OnLine ALL 260
17 1989 SCC OnLine ALL 125

original register of 1970, but the original register of the year 1970 was not produced.

30. In ***Abdul Hakeem Pardhan,*** the Division Bench of the High Court held that entries made in the family register were never made in the regular course of official duties. The family register may be an evidence to show that the person is living in the family but not an evidence for ascertaining age.

31. In ***Ram Murti Devi***, the entry in the family register was altered by the office of District Magistrate. The said issue is not arising for consideration before this Court. The parties were referred to seek remedy in terms of Rule 6A of the Family Register Rules.

32. Section 35 of the Evidence Act, 1872 is attracted both in civil and criminal proceedings. It contemplates that a register maintained in the ordinary course of business by a public servant in discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such register is kept would be a relevant fact. This Court in a judgment reported as ***Ravinder Singh Gorkhi v. State of U.P.***[18] held as under:

> "23. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in the ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, inter alia, such register is kept

18 (2006) 5 SCC 584

would be a relevant fact. Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder: (i) it should be in the nature of the entry in any public or official register; (ii) it must state a fact in issue or relevant fact; (iii) entry must be 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 (iv) all persons concerned indisputably must have an access thereto."

33. In ***Krishna Pal v. State of U.P.,***[19] the learned single judge of Allahabad High Court held that a family register is a public record in terms of the Evidence Act inasmuch as the same is prepared under the statutory provisions of Section 15 (xxiii)(e) of U.P. Panchayat Raj Act read with Rule 2, Rule 67, Rules 142 to 144 of the U.P. Panchayat Raj Rules, 1947. The family register is prepared under the Uttar Pradesh Panchayat Raj (Maintenance of Family Registers) Rules, 1970. It is to be noted that Form(A) also records the date of death of a family member. There is yet another Form namely Form (D) which is for registering the date of birth and death. Both these Forms, therefore, record the date of death of a person and they are prescribed under the Rules. Needless to say that the Rules are framed by the State Government and the registers prescribed for particular purposes are notified under the Rules. Reference may be made to Section 110 (vii) of the 1947 Act for the said purpose. The Court held as under:-

> "In my opinion, a presumption has to be drawn in respect of the said public document and it cannot be merely disbelieved if the Gram Panchayat Adhikari had not been produced to prove it. The copy of the family register is a public document and a presumption as to its genuineness is accepted under Section 79 of the Indian Evidence Act."

19 2010 SCC OnLine All 695

34. In ***Shiv Patta v. State of U.P.***,[20] it was held that the family register is maintained in discharge of statutory duties under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. Similarly, date of death is maintained in discharge of statutory duty under Registration of the Birth and Deaths Act, 1969 and it is a public document within the meaning of section 74 of the Evidence Act, 1872. The certified copy of these documents is admissible in evidence under section 77 of the Evidence Act and carry presumption of correctness under section 79 of the Act. High Court held that in the absence of any evidence to prove that it was incorrect, its correctness is liable to be presumed under section 79 of the Evidence Act, 1872.

35. Therefore, such Rules are not irrelevant as argued by Mr. Bhargava. This family register does not only contain date of birth but also keeps the records of any additions in the family, though the evidentiary value needs to be examined in each case.

36. We are unable to approve the broad view taken by the High Court in some of the cases that Family Register is not relevant to determine age of the family members. It is a question of fact as to how much evidentiary value is to be attached to the family register, but to say that it is entirely not relevant would not be the correct enunciation of law. The register is being maintained in accordance with the rules framed under a statute. The entries made in the regular course of the

20 2013 SCC OnLine All 14202

affairs of the Panchayat would thus be relevant but the extent of such reliance would be in view of the peculiar facts and circumstances of each case.

37. In terms of Rule 12(3)(iii) of the Rules, birth certificate issued by corporation or municipal authority or a panchayat is a relevant document to prove the juvenility. The family register is not a birth certificate. Therefore, it would not strictly fall within clause (iii) of Rule 12(3) of the Rules. Even Section 94(2)(ii) of the 2015 Act contemplates a birth certificate issued by a panchayat to determine the age.

38. The appellant sought to rely upon juvenility only on the basis of school leaving record in his application filed under Section 7A of the 2000 Act. Such school record is not reliable and seems to be procured only to support the plea of juvenility. The appellant has not referred to date of birth certificate in his application as it was obtained subsequently. Needless to say, the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. As also held in ***Babloo Pasi***, the provisions of the statute are to be interpreted liberally but the benefit cannot be granted to the appellant who has approached the Court with untruthful statement.

39. Therefore, we find that the appellant has approached the Court with unclean hands as the documents relied upon by him are not genuine

and trustworthy. Thus, we find that the appellant cannot be given benefit of juvenility. The view taken by the High Court is a possible view in law and does not call for any interference in the present appeal. Accordingly, the appeal is dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
FEBRUARY 15, 2022.