

**HIGH COURT OF MADHYA PRADESH, BENCH INDORE**  
**( Single Bench : Hon'ble Shri Justice Vivek Rusia )**

1.Case No. : Criminal Appeal No.5475/2020  
2.Parties name : Raju @ Vijay s/o Daulji Ahirwar

V/s

State of M.P & one another

3.Date of Order : 10<sup>th</sup> June, 2021.  
4.Bench (SB) : Hon'ble Shri Justice Vivek Rusia.

5.Whether approved for Reporting. : Yes.

6.Name of counsels for parties : Shri Nilesh Dave, Advocate for the appellant.  
Shri R.S.Bhadoria, learned  
Panel Advocate for the respondent/State.

**7.Law laid down** :

The procedure prescribed under section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is to be adopted by the committee or board but where the accused claiming himself to be "Child in conflict with law" is produced before the Magistrate or Sessions Court empowered under [Cr.P.C.](#) to conduct trial and an objection is raised about juvenility at the time of commission of offence, the procedure prescribed under section 9 (2) of the JJ Act, 2015 is liable to be followed. Sub section (2) of section 9 provides a formal enquiry, taking of evidence as may be necessary to determine the age.

Since this issue is related to the juvenility of an accused, hence provisions of the section 94 (2) of the JJ Act about the date of birth recorded in the birth certificate or matriculation or equivalent certificate from the concerned board cannot be ignored by the Magistrate / Sessions court while conducting enquiry as contemplated under section 9(2) of JJ Act, 2015 .

**[ VIVEK RUSIA ]**  
**JUDGE**

**HIGH COURT OF MADHYA PRADESH: BENCH AT  
INDORE**

**SINGLE BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA**

**CRIMINAL APPEAL NO.5475/2020**

Appellant : Raju @ Vijay s/o Daulji Ahirwar

Versus

Respondents : State of M.P & one another

Shri Nilesh Dave, learned counsel for the appellant.

Shri R.S.Bhadoria, learned Panel Advocate for the respondent/State.

Heard learned counsel for the parties through video conferencing.

**O R D E R**

(Passed on 10.06.2021)

Appellant has filed the present appeal under section 14(A)(2) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act (for short 'the SC/ST Act') being aggrieved by the order dated 16.09.2020 passed by the Special Judge (SC/ST Act), Rajgarh whereby the application filed by the accused seeking declaration that he is **“child in conflict with law”** and his trial be sent to Board was rejected.

Facts of the case in short are as under:

2. An FIR was registered against the appellant under sections 363, 366, 376-B, 376(2) of the IPC read with section 5 & 6 of the Protection of Children from Sexual Offences Act and 3(2)(v) of the SC/ST Act and he was arrested. The investigation was completed and charge sheet has been filed before the Special Session Judge . In the charge sheet his age is declared as 19 years at the time of commission of offence on 25.12.2019.

3. Appellant/accused filed an application asserting that at the time of commission of the offence he was below 16 years of age i.e. juvenile, therefore, his trial be sent to the juvenile Court/ board. In

support of above contention, he has produced the mark sheet of class-6, year 2018-19 in which his date of birth is mentioned as 13.03.2006.

4. Vide order dated 06.08.2020 learned trial Court has ordered for an enquiry under section 9(2) read with section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '**the JJ Act, 2015**'). In support of his contention the appellant has examined ML Kushwaha, In-charge Head Master of Govt. Primary School, Pipalkheda as PW/1, Dauljiram, (father) as PW/2 & Ramkalibai (Mother) as PW/3. They have deposed that the date of birth of the appellant is recorded as 15.07.2015 at the time of admission in class-3. The Head Master has appeared before the Court with the original admission register Ex.D/1. Prima facie, learned Judge has disbelieved the entry in the record and directed for ossification test of the appellant. He was examined by the District Medical Board, Rajgarh and a report dated 04.09.2020 was submitted to the Court. As per the findings of the Medical Board, the age of the applicant was 18 years or more at the time of commission of the offence. In order to prove the report Dr.Devashish Maskole, Dentist appeared in the Court as PW/4 and deposed that as per the opinion of the Medical Board Ex.P/2 the age of the appellant/accused was 18 years or more.

5. After hearing learned counsel for the appellant and the Public Prosecutor, learned trial Court has disbelieved the entry of date of birth recorded in the mark sheet as well as scholar register and accepted the opinion of the Medical Board and held that the appellant is not "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence; as defined under section 2(13) of the JJ Act and the trial cannot be sent to the JJ Board. Being aggrieved by the aforesaid order, the present appeal is filed.

6. Shri Dave, learned counsel appearing for the appellant submits that sub section (2) of section 94 of the JJ Act provides that in case the committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not then shall undertake the process of age determination by obtaining date of birth

certificate from the school or matriculation or equivalent certificate or birth certificate from the corporation and only in absence of the aforesaid certificates age shall be determined by the ossification test or any other medical age determination test. In the present case, the appellant has produced the mark sheet and examined the In-charge school Head Master, therefore, there was no need to send the appellant for determination of age by an ossification test. The date of birth as recorded in the birth certificate is 13.3.2006 and at the time of alleged commission of offence he was a child, therefore, learned Court has wrongly passed the impugned order contrary to the provisions of law, hence the impugned order be set aside and the trial be sent to the juvenile Court.

7. Learned Panel Lawyer appears for the State opposes the aforesaid prayer by submitting that the learned Court has rightly disbelieved the entry made in the mark sheet as well as record because the witnesses have disclosed that there was no material produced at the time of recording the date of birth as 13.03.2006 in the school. As per section 94(2) of the JJ Act the date of birth recorded in the matriculation certificate is admissible. The date of birth recorded in the scholar register as well as in the mark sheet of class-3 to 6 are not admissible, hence this appellant was rightly referred to the Medical Board. Learned Trial Court has also found that the age of mother of the appellant was 50 years at the time of birth of the appellant on 13.03.2006 which is also doubtful in the rural areas where the marriage undertakes at an early age. Learned Court has personally seen the appellant and found that he appears to be more than 18 years of age, therefore, in view of this cumulative circumstances and the material available on record the appellant has rightly been not hold child and the appeal is devoid of merit and liable to be dismissed.

I have heard the learned counsel for the parties and perused the record.

8. According to the section 2 (13) of the JJ Act “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date

of commission of such offence. Section 9(2) of the JJ Act is reproduced below for ready reference:

**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 person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.*

9. The aforesaid section provides the procedure to be followed by the Magistrate who has not been empowered under this Act. When a Magistrate is of the opinion that the person alleged to have committed an 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. Under sub section (2) in case a person before the Court is a child or was a child on the date of commission of the offence, the Court shall make an enquiry, take such evidence as may be necessary but not an affidavit to determine the age of such person and shall record the finding.

10. Learned counsel for the appellant has emphasized on the provisions of the Section 94 of the JJ Act. For ready reference same is reproduced as under:-

**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: 39 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.

Above section provides the procedure for the Committee or Board to be adopted in order to form an opinion about the age of the child. In case the committee or the board has reasonable ground for doubt regarding whether the person brought before it is a child or not the committee or board shall undertake a process of age determination by seeking evidence by obtaining date of birth, certificate from the school or matriculation or equivalent certificate from the concerned examination board, if available or the birth certificate given by the corporation and in case of failure to produce non availability of aforesaid certificate the age shall be determined by ossification test.

11. It is clear from the aforesaid that the procedure prescribed under section 94 is to be adopted by the committee or board but in the present case the appellant was produced before the Special Court empowered under SC/ST Act and Cr.P.C. and an objection has been raised about his juvenility at the time of commission of offence, therefore, the procedure prescribed under section 9 is to be followed and rightly so done by the learned Court. Sub section (2) of section 9 provides a formal enquiry, taking of evidence as may be necessary to determine the age. The learned Magistrate took the evidence of Headmaster, parents and the doctor and held that this applicant was not child at the time of commission of the offence. Parents have failed to produce any material to show the basis on which the date of birth 13.03.2006 was recorded.

12. Since this issue is related to the juvenility of an accused, hence provisions of the section 94 (2) about the date of birth recorded in the birth certificate or matriculation or equivalent certificate from the concerned board cannot be ignored by the Magistrate / Sessions Court while conducting enquiry as contemplated under section 9(2) of JJ Act, 2015 .

13. The appellant has produced his mark sheets of class-5 & 6 and the scholar register. In absence of birth certificate or mark sheet issued by the board the birth certificate given by the corporation or municipal authority, or panchayat is admissible. In absence of these two documents the age is to be determined by an ossification test, therefore, learned Court below has not committed any error while assessing the age of the appellant as 18 years on the basis of the report submitted by the Medical Board.

14. In the case of **Nagendra alias Wireless vs. State of Uttar Pradesh reported in (2017) 11 SCC 598** in similar facts and circumstances and in view of rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which is para-material to section 94(2) of the JJ Act, 2015 the Hon'ble the Supreme Court of India has discarded the entry in the school leaving certificate is inadmissible under Rule 13(3). The relevant para is reproduced below:

3. *Having given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the appellant, we are satisfied that a school leaving certificate is not a relevant consideration to determine the juvenility of an accused/convict under Rule 12(3) thereof. The aforementioned statutory provision was not considered by this Court while deciding Ranjeet Goswami case. The same cannot therefore be any precedential value in terms of the statutory provisions, referred to hereinabove.*

15. In the case of **Ashwani Kumar Saxena vs. State of M.P reported in (2012) 9 SCC 750** while interpreting rule 12, section 7-A of the Act read with section rule 12 of the Rules, 2007 the Supreme Court of India has held that only in absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended the question of obtaining the medical opinion from the duly constituted medical board arises. Para-32 is reproduced below:

*32. "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.*

16. In view of the above, there is no substance in the contention of the learned counsel for the appellant that the learned Court has wrongly obtained the medical opinion despite availability of the mark sheet of class-5<sup>th</sup> of the appellant. I do not find any ground in the appeal, accordingly same is dismissed.

hk/

**(VIVEK RUSIA)  
JUDGE**