2025 INSC 918

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.347 OF 2018

SURESH **…APPELLANT**

VERSUS

STATE OF UTTAR PRADESH & ANR. **…RESPONDENTS**

R1: **STATE OF UTTAR PRADESH**

R2: DEVI SINGH

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

The present appeal emanates from the Final Judgment and Order passed by the High Court of Judicature at Allahabad (hereinafter referred to as the 'High Court') in Criminal Revision No.2144/2015 dated 29.03.2016 (hereinafter referred to as the 'Impugned Order') [**2016:AHC:50543**], whereby the High Court dismissed the criminal revision petition filed by the Appellant and upheld the Order passed by

the Court of the learned Additional Sessions Judge, Court No.1, Kairana, Muzaffarnagar (hereinafter referred to as the 'Trial Court') on 19.05.2015, declaring Respondent No.2 as a '*juvenile*' under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Juvenile Justice Act') [as it then was].

BRIEF FACTS:

2. The Appellant alleges that, on 31.08.2011, while the Appellant, his father, mother and his brother/Rajesh Singh (hereinafter referred to as 'Rajesh') had gone to their fields, his *chacha* (paternal uncle)/Lillu Singh and his son Devi Singh/Respondent No.2 forcibly entered his house at around 10 am. When restrained by his wife who was alone at the house, the Appellant alleges that the two persons – father and son i.e., Lillu Singh and Respondent No.2 – manhandled her. When the said incident was narrated to the Appellant and his brother by the Appellant's parents who had reached the house during the incident, Rajesh went to the accused/father-son duo, to enquire about the same. In this interaction, it is alleged that his *chacha* and Respondent No.2 forcibly took Rajesh inside their house, where the *chacha* caught/held him, and Respondent No.2 took out a country-made pistol

and fired it on Rajesh with the intention to kill him. It is stated that pursuant to this, Rajesh suffered injuries and died *en route* to Kairana hospital.

3. Thereafter, the Appellant lodged a First Information Report being Crime Case No.385/2011 at Kairana Police Station, Muzaffarnagar against Lillu Singh and Respondent No.2 under Sections 452[1] and 302[2] of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

4. This complaint proceeded to be converted into Sessions Trial No.123/2012 before the Court of the learned Additional Sessions Judge, Kairana, Muzaffarnagar. With a plea that his date of birth was 18.04.1995, and as on the date of the incident, he was aged 16 years, 4 months and 13 days, Respondent No.2 filed a miscellaneous application numbered as Miscellaneous Case No.04/11/2015 before the Trial Court seeking to establish his juvenility, which was connected with Sessions Trial No.123/2012. The Trial Court, on appreciating the

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[1] '***452. House-trespass after preparation for hurt, assault or wrongful restraint***.—*Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*'

[2] '***302. Punishment for murder***.—*Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine*.'

evidence and material placed on record, *vide* Order dated 19.05.2015, confirmed that as on the date of the incident, the Respondent No.2 was 16 years, 4 months and 13 days old and thereby established his juvenility.

5. Aggrieved by the Order of the Trial Court, the Appellant preferred a criminal revision petition before the High Court, which was dismissed *vide* the Impugned Order. Consequently, the juvenility of the Respondent No. 2 stood confirmed by the High Court.

THE APPELLANT'S SUBMISSIONS:

6. The Appellant's submissions majorly revolved around pointing out how the Courts below erred in establishing and confirming the Respondent No.2's juvenility based on a transfer certificate issued by the first school attended by Respondent No.2, i.e., Kaushik Modern Public School, Khurgaon, to which he was directly admitted in Class V. Learned counsel for the Appellant submitted that the Courts' reliance on this certificate issued by the school was incorrect, when a statutory document like the Family Register maintained under the U.P.

Panchayat Raj Act, 1947 by the Gram Panchayat declared the age of the Respondent No.2 as 20, mentioning his year of birth as 1991. Further, the Voters' List also, of the year 2012, mentioned Respondent No.2's age as 22 years as on 01.01.2012. In this light, learned counsel urged that though there were school certificates which declared the date of birth of the Respondent No.2 as 18.04.1995, relying on the date of birth mentioned in the transfer certificate issued by the first school attended, these ought not to have been relied on, when there is evidence contradicting this claim, especially in light of the fact that the first school attended by the Respondent No.2 directly admitted him into Class V, recording his date of birth as 18.04.1995 – on the oral mention of his father, without enquiring/looking into any proof for his date of birth being such.

7. In this light, learned counsel sought to buttress his argument on the basis of Section 35 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), which would make admissible a document if it states a relevant fact or fact in issue and if it is made by a public servant in discharge of his official duty or by any other person in performance of a duty specially enjoined by law. It was submitted that Section 35 of the Evidence Act would be attracted both in civil and

criminal proceedings. To support this argument, learned counsel for the Appellant placed reliance on a decision of this Court in ***Birad Mal Singhvi v Anand Purohit*****, 1988 Supp SCC 604**, which held:

> '***15.*** *… To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly; It must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. …*'

8. Importantly, learned counsel submitted that the age of the accused-Respondent No.2 was over 18 years even as per the medical evidence/report given by the Chief Medical Officer, on 01.12.2012, which stated that his age was 22 years, which meant that at the time of the incident, the accused was over 20 years of age, and thus, could not raise any claim of juvenility. To support this submission, learned counsel placed reliance on the decision in ***Om Prakash v State of Rajasthan*****, (2012) 5 SCC 201**, wherein this Court held that in cases of serious offences like murder, rape, *etcetera*, an accused cannot be

allowed to abuse the statutory protection afforded to him by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. This Court also held that under such circumstances, medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records, which give rise to hypothesis and speculation about the age of the accused. It was prayed that the appeal be allowed.

SUBMISSIONS OF RESPONDENT NO.1-STATE:

9. Respondent No.1/State of Uttar Pradesh succinctly submitted that since Respondent No.2 neither produced a birth certificate nor a matriculation certificate, in such case, date of birth as mentioned in the transfer certificate cannot be made the basis for giving benefit of the Juvenile Justice Act to the accused-Respondent No.2, especially when the Appellant produced a Voters' List, Family Register and Medical Report which shows that at the time of the incident, Respondent No.2 was a major. Thus, the State also prayed that the Orders of the courts

below be interfered with and set aside, and the instant appeal be allowed.

SUBMISSIONS OF RESPONDENT NO.2:

10. The learned counsel for the Respondent No.2 canvassed three-fold arguments. *Firstly*, learned counsel contended that the Trial Court established the Respondent No.2's juvenility based on the date(s) of birth consistently recorded in the transfer certificates of multiple schools attended by him. This date of birth, i.e., 18.04.1995, as recorded in the school transfer certificates of 4 schools where Respondent No.2 studied from Classes Vth to IXth suggests that, as on the date of the incident, he was 16 years, 4 months, and 13 days old and, thus, entitled to the benefit conferred under the Juvenile Justice Act read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 'Rules'). Learned counsel contended that the officials of the schools which gave these school certificates were also examined, and the validity of these certificates was testified by these witnesses. In light of such evidence and testimonies placed, learned counsel contended that the Trial Court rightly established juvenility of Respondent No.2.

11. *Secondly*, learned counsel submitted that Rule 12 of the Rules provide that the Court determining the juvenility of an accused can seek evidence by obtaining a matriculation certificate, in absence whereof, a date of birth certificate from the school first attended, in absence whereof a birth certificate given by a corporation or a municipal authority, and only in absence of these documents, a medical opinion declaring the age of the juvenile would be considered. Learned counsel submitted that in the present case, since matriculation certificate in respect of Respondent No.2 was not available, the school transfer certificate issued by the Kaushik Modern Public School, Khurgaon, Shamli, Uttar Pradesh, which is a certificate of the first school attended, is exclusive proof that the date of birth of Respondent No.2 is 18.04.1995, and there is no need to consider any other evidence such as certificate of the Municipal Corporation or Family Register or certificate of the Medical Board.

12. *Thirdly*, learned counsel submitted that Respondent No.2 has been released by the Juvenile Justice Board after completing the maximum punishment of three years prescribed by law. It was, accordingly, urged that the appeal be dismissed.

ANALYSIS, REASONING AND CONCLUSION:

13. Having bestowed anxious thoughts to the issue, we find that the approach adopted by the Trial Court as well as the High Court was not proper. Though the issue of juvenility, indubitably and primarily has to be determined as per the relevant provisions of the Juvenile Justice Act and the Rules framed thereunder, as applicable at the relevant time, yet under appropriate circumstances and with justifiable reasons, the Court examing the issue has the discretion to take other relevant materials and factors into account, for ultimately the cause of justice has to prevail.

14. In the present case, the serious allegation against Respondent No.2 is that on the exhortation of his father, he along with his father forcibly took the deceased Rajesh inside their house, whereafter Respondent No.2 took out a country-made pistol and shot the deceased Rajesh, resulting in his death.

15. With regard to the modalities of the enquiry governing determination of juvenility, Rule 12(3) of the Rules provides:

> '***12. Procedure to be followed in determination of Age***.—
> …
> ***(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;*
> *(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 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.*
> *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.*'

16. In the present case, four certificates have been produced from schools said to have been attended by Respondent No.2 *viz*. Public

Inter College, Kairana, Muzaffarnagar; S. N. Junior High School, Kairana; Sarvoday Public Junior High School, Mohalla Shitla, Kairana, Muzaffarnagar, and; Kaushik Modern Public School, Khurgaon, but all are based on the certificates issued by the first attended school, Kaushik Modern Public School, Khurgaon.

17. The first school certificate issued by Kaushik Modern Public School, Khurgaon, where Respondent No.2 was admitted in Class V, records his date of birth as 18.04.1995. Pausing here, it is also relevant to indicate that the Headmaster of the said School while deposing has stated that this birth-date entry was made only on an oral representation by Respondent No.2's father.

18. On the other side, the Appellant produced the relevant page from a Family Register maintained under the U.P. Panchayat Raj Act, 1947 which records the year of birth of the Respondent No.2 as 1991. The Appellant further relied on the Report of the Medical Board which was constituted pursuant to a reference made by the Trial Court when the plea of juvenility was raised before it by Respondent No.2. Such examination was conducted and Report submitted on 01.12.2012 i.e., nearly after a year of the date of the incident. The Medical Board

through its Report opined that Respondent No.2 was aged about 22 years, which would make him between 20-21 years of age, as on the date of the incident, whereas, as per the school certificates, his age was estimated to be 16 years, 4 months and 13 days. Another factor which cannot be ignored is the Voters' List of the Kairana Legislative Assembly Constituency of the year 2012. The List shows Respondent No.2 to be approximately 21 years old as on 01.01.2012. This entry is not conclusive proof, but the fact remains that such entry is made only on representation of either person concerned or his/her parent/guardian. No objection to Respondent No.2's name figuring in the Voters' List by either him or his parent was raised contemporaneously. In our considered view, such conduct would have a bearing, especially when there are rival and competing documents denying his juvenility.

19. The relevancy of an entry in a '*public record*' is guided by Section 35 of the Evidence Act:

> '***35. Relevancy of entry in public record or an electronic record, made in performance of duty.***— *An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made 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 such*

book, register or record or an electronic record, is kept, is itself a relevant fact.'

20. Section 74 of the Evidence Act deals with '*public documents*':

'***74. Public documents.***—*The following documents are public documents: —*
(1) Documents forming the acts, or records of the acts —
(i) of the sovereign authority,
(ii) of official bodies and tribunals, and
(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
(2) public records kept in any State of private documents.'

21. There is no dispute on the factum that Kaushik Modern Public School, Khurgaon – the first attended school – is not a Government School and thus, the records maintained by the said School would not be '*public documents*'. Moreover, the Headmaster/Principal of such School cannot be said to be a '*public servant*' for the purposes of the Evidence Act. The Headmaster when examined has himself taken the stand that Kaushik Modern Public School, Khurgaon was only a State Government-recognized school.

22. Therefore, neither the Headmaster/Principal of the first attended school nor its records would qualify as '*public servant*' or '*public record*' or '*public document*' respectively.

23. Even otherwise, in the case at hand, except for the Headmaster's sole testimony, there is no material to establish that the date 18.04.1995 as Respondent No.2's date of birth, as recorded in the certificate issued by Kaushik Modern Public School, Khurgaon, was correct. As a matter of fact, the Principal in his cross-examination stated that when the Respondent No.2 was leaving the school on that day after making cutting he had written the correct date of birth. Moreover, the Principal has also stated that the birth-date entry was made on the basis of an oral representation alone by Respondent No.2's father and when he was asked for the horoscope or any other document in support of the date of birth of the Respondent No.2, nothing was submitted. This, in our view, discredits the certificate issued by the Kaushik Modern Public School, Khurgaon. As noted hereinbefore, the other school certificates were issued following this and therefore, meet the same fate inasmuch as they cannot be treated as correct, in the face of conflicting public records and public documents as also the Medical Report which state to the contrary. The

observations by a Bench of 2 learned Judges in ***Om Prakash v State of Rajasthan*** (*supra*) are clearly attracted, and the relevant excerpts therefrom read as under:

> '***22.*** *It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.*
>
> ***23.*** *Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.*
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33. *Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not the accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.*

34. *The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.*

35. *While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical tests like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused.*

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38. *The Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of*

> *justice while conducting the trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.*'
>
> (emphasis supplied)

24. Rule 12(3)(a) of the Rules lays down the sequential list of certificates to be examined and the order thereof. As no '*matriculation or equivalent certificates*' were available under Rule 12(3)(a)(i) of the Rules, thus under Rule 12(3)(a)(ii) of the Rules, '*date of birth certificate from the school (other than a play school) first attended*' was attracted and certificate issued by Kaushik Modern Public School, Khurgaon was taken as conclusive proof of date of birth. However, the deposition of the School's Headmaster, especially to the effect that the birth-date was noted as per an oral representation by Respondent No.2's father, makes the said certificate unreliable. Moving on, Rule 12(3)(a)(iii) and Rule 12(3)(b) of the Rules, respectively, provide for '*birth certificate given by a corporation or a municipal authority or a panchayat*' 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.*'

25. From an overall circumspection of all the facts and circumstances surrounding the case, including the Rules, the picture which emerges is that on the one hand, there is the certificate backed by the testimony of the Headmaster of the first school (which as indicated *supra* notes that the recordal was made on the oral say-so of Respondent No.2's father) relating to the date of birth and the three consequentially-made/issued certificates, whereas on the other hand, there exists a statutory document, being a public record and a public document, in Form (A) under Rule 2 of the Rules framed under the U.P. Panchayat Raj Act, 1947 disclosing the year of birth of Respondent No.2 as 1991 as also the entry in the Voters' List for the Legislative Assembly of the year 2012 and the Medical Report apropos the age of Respondent No.2 given by the Chief Medical Officer, Muzaffarnagar, who opined that Respondent No.2 was aged about 22 years on 01.12.2012. As such, the certificate issued by Kaushik Modern Public School, Khurgaon could not have been taken as conclusive proof of date of birth of Respondent No.2, discarding Form (A) under Rule 2 of the Rules under the U. P. Panchayat Raj Act, 1947; the entry in the Voters' List for the Legislative Assembly of the year 2012, and; the Medical Report. On the basis of the latter three documents, it is clear that Respondent No.2 cannot be said to have been a '*juvenile*' on the date of the unfortunate incident.

26. Accordingly, for the reasons aforesaid, the declaration of Respondent No.2 as a '*juvenile*' being plainly improper, the Impugned Order as well as the Order dated 19.05.2015 of the Trial Court holding the Respondent No.2 to be a '*juvenile*' are hereby set aside. Respondent No.2 is held to have been a major as on the date of commission of the alleged offence and liable to be tried as a major for Crime No. 385/2011, Police Station - Kairana.

27. The trial be expedited. The Trial Court is directed to conclude the trial on priority basis ensuring that the same is taken to its logical conclusion, latest by the end of July, 2026.

28. In view of Respondent No.2's Written Submissions to the effect that the accused/Respondent No.2 was released by the Juvenile Justice Board, it is directed that he shall appear before the Trial Court within three weeks from date and shall be at liberty to pray for bail, to be considered on its own merits by the Trial Court. Failure to appear within three weeks will enable the State to resort to coercive measures to ensure his production. For completeness, the Order directing his

release upon completing three years under the Juvenile Justice Act would also require to be and is set aside.

29. The trial shall proceed on its own merits in accordance with law without being prejudiced on merits by the instant Judgment. If the trial results in conviction, benefit of set-off in relation to 3 years shall be afforded to Respondent No.2.

30. The Appeal is allowed in the aforesaid terms.

……J.
[PANKAJ MITHAL]

……J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
AUGUST 01, 2025