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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
K.M. JOSEPH; J., ANIRUDDHA BOSE; J., HRISHIKESH ROY; J.
27 March, 2023
NARAYAN CHETANRAM CHAUDHARY *versus* **THE STATE OF MAHARASHTRA**

CRIMINAL MISCELLANEOUS PETITION NO. 157334 OF 2018 IN REVIEW PETITION (CRIMINAL) NOS. 1139-1140 OF 2000 IN CRIMINAL APPEAL NOS. 25-26 OF 2000

Death Penalty - Prisoner awarded death penalty for five murders found to be a juvenile at the time of offence in 1994 - Supreme Court orders release forthwith.

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 9 (2) - Death penalty case reopened to inquire into juvenility claim - Convict found to be a juvenile after 28 years of offence - Supreme Court orders release.

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 9 (2) - So far as the procedure for making an inquiry by the Court, Section 9(2) of the 2015 Act does not prescribe scrupulously following trial procedure, as stipulated in the 1973 Code and the Indian Evidence Act, 1872.

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 9 (2) - Once the applicant has discharged his onus, in support of his claim of juvenility by producing the date of birth certificate from the school, the State had to come up with any compelling contradictory evidence to show that the recordal of his date of birth in the admission register was false.

For Petitioner(s) Mr. R.Basant, Sr.Adv. Mr. Vishnu P., Adv. Ms. Trisha Chandran, Adv. Ms. Shreya Rastogi, Adv. Mr. Shadan Farasat, AOR

For Respondent(s) Mr. Sachin Patil, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Geo Joseph, Adv. Mr. Risvi Muhammed, Adv. Mr. Durgesh Gupta, Adv. Mr. Hrishikesh Chitaley, Adv. Mr. Vijay Kari Singh, Adv. Mr. Rajat Joseph, AOR

J U D G M E N T

ANIRUDDHA BOSE, J.

This is an application under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("2015 Act") requesting this Court to hold that the applicant, who is a convict for committing offences under Sections 302, 342, 397, 449 read with 120B and 34 of the Indian Penal Code, 1860 ("1860 Code") was a juvenile on the date of commission of the offence. Simultaneous prayer of the applicant is for his release from custody on the ground of having served more than the maximum punishment permissible under the Act. The applicant has been sentenced to death by the Additional Sessions Judge, Pune by a judgment and order dated 19th February 1998 and 23rd February 1998 respectively. This application has been taken out in connection with a petition for review of the order by which his conviction and sentence was sustained by this Court after confirmation by the High Court. The review petition of the applicant was also dismissed on 24th November 2000. The applicant, along with two other offenders (Jitu and Raju) were tried for commission of offences under the aforesaid provisions of the 1860 Code. The applicant had not raised the plea of juvenility at the trial or the appellate stage. In the Trial Court, said Raju had turned approver and was tendered pardon. Both the judgment of conviction and order of

sentence were confirmed by the High Court on 22nd July 1999 in the appeal of the applicant as also in the confirmation proceeding. The appeal against the judgment of conviction and order of death sentence made by the applicant was dismissed by this Court on 5th September 2000. The offence of the applicant is no doubt, gruesome in nature. On 26th August 1994, as per the prosecution case sustained by all the judicial fora including this Court, the applicant alongwith the two other accomplices had committed murder of five women, (one of whom was pregnant) and two children. The offence took place at Pune in the State of Maharashtra. The applicant was arrested on 5th September 1994 from his home village and is in detention for more than 28 years.

2. Though the offence was committed at Pune, the applicant claims to hail from Jalabsar, in Shri Dungargarh tehsil, at present in Bikaner district, Rajasthan. It is from there he was arrested. He was tried as Narayan Chetanram Chaudhary. His plea before us is that his actual name is Niranaram. In the Inquiry Report, which we shall deal with later in this judgment, there is observation to the effect that people in Pune, Maharashtra might find it difficult to pronounce Niranaram and there is possibility of pronunciation mistake to call "Niranaram" as "Narayan" in Pune. The said tehsil was earlier in the district of Churu but in the year 2001, it came within the Bikaner district. Date of occurrence of the offence is 26th August 1994 and the chargesheet submitted against the applicant showed his age to be about 20 years at the time of commission of the offence. The applicant's claim of juvenility is primarily based on a "certificate" of date of birth issued on 30th January 2019, in the name of Niranaram, son of Chetanram. The said certificate has been issued by the Pradhanacharya (Headmaster), Rajakiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar, Shri Dungargarh. In the said document, it is recorded that Niranaram was born on 1st February 1982. In a "transfer certificate" by the same authority issued on 15th August 2001, it is reflected that he had joined the school in Class First on 1st April 1986 vide admission number 568 and left from Class Third (Passed) on 15th May 1989.

By the date of birth reflected in these certificates, the age of the applicant on the date of commission of offence would have been 12 years and 6 months. The applicant, as we have already indicated, was tried as Narayan, not Niranaram. Moreover, in certain other documents Niranaram's age is shown to be different from that reflected in the said certificates. The variations or discrepancies as regards the name of applicant and his age are the factors we shall be dealing with in this judgment and we shall dwell into these aspects in subsequent paragraphs of this judgment.

3. In the chargesheet, the accused Narayan's age was shown to be 20 years. We find from the judgment of the High Court that the said age (20-22 years) was given on behalf of the applicant only at the time of hearing. The High Court had tangentially referred to the question of age of the applicant in its judgment in the appeal and death reference. At that time, however, the plea of juvenility was not there. It was observed in the High Court's judgment that the age of the accused at the time of occurrence ought to be borne in mind while considering the question of awarding the sentence.

4. The applicant for the first time wanted a medical examination for determination of his age on 14th August 2005, when the Prison Inspector General, Western Division, Pune went to meet the applicant at Yerawada Central Prison. A request was made thereafter by the prison authorities to the Chief Medical Officer and the applicant was taken to Department of Forensic Science, BJ Medical College and Sassoon General

Hospital, Pune. The age determination report by the Department of Forensic Medicine, of the said institution states that on 24th August 2005, age of the patient was more than 22 years but less than 40 years including margin of error. The said report reads:-

"*MD/ AGE/ 198/ 2005*
Department of Forensic Science
B J Medical College and Sassoon
General Hospital, Pune

Proforma for age examination

24 / 8/2005

Mr. Narayan Chetram Chaudhary
Brought by Yerawada Central Prison, Pune
Date: 24/8/2005, time: 3:45 pm, MLC No 25802, date:23/8/2005
Consent: The doctors have given me an idea of the tests involved in determination of age. I am ready for the examination of my own free will.
(unclear 3 line)
Physical Development: Medium Teeth: Upper 15
Lower 15 Ht 5'9" Wt 68 kg
Secondary Sex Characters
Male:
Moustache: Present
Beard: Shaved
Pubic Hair: Present
Voice: normal
Genitals: normal
Medicolegal exam: X Ray plate no R180(4) date: 23/8/05
(unclear medical description)
Conclusion: From clinical & radiological examination the age of the patient on date 24/8/05 'more than twenty two years but less than forty years (40 years)' including margin of error.
Signed in the presence of:

Sd/-
B G More
Sd/-
Dr. M.S. Vable Prof. & Head / Assec. Prof. / Asstt. Lect.
Department of Forensic Medicine,
B. J. Medical College, Pune – 411001"

(quoted verbatim from the paperbook)

5. It was in the early part of 2006, we are apprised by Mr. Basant, learned senior counsel representing the applicant, that his cause was taken up by certain human rights groups. Some public spirited individuals espousing the applicant's cause on the point of juvenility had written to the President of India on 24th January 2006 requesting cancellation of award of death penalty on the ground that he was a juvenile at the time of commission of the offence. A copy of the said communication, captioned "Mercy Petition", has been annexed as A-7 to the application. The text of this petition is reproduced below: -

"President's Secretariat CA II Section

Date- 24/1/2006
Dy. No. 03-/06 M.P.

Mercy Petition on behalf of a juvenile to the President

Hon. Excellency
The Hon. President of India,
Rashtrapati Bhavan, New Delhi
To his Excellency, the President of the Republic of India We are an organization Human Rights and Law Defenders (HRLD) working on different issues on Human Rights violations. We also work in the Yerawada Central Prison, Pune and provide free legal aid to the prisoners in peril.

It is due to the extremity of the matter before us that we take the liberty of corresponding with your Hon. Self to make you aware that one person names Niranaram Chetanram Chaudhary, born on 1/2/1982, who has been awarded the death penalty in a murder case in languishing in the Yerawada Central Prison, Pune. Therefore, this applicant was around 13 years of age at the time of committing this offence. Your Excellency, your office has received a mercy petition from his co-accused Jitendra Nainsingh Gehlot DY no 7/27 on 8/11/2004. You are indeed suitably in receipt of all the relevant case material which has been earlier sent to you office.

The prison authorities have also requested us that we should attract your attention to the fact that Niranaram Chetanram Chaudhary was a juvenile at the time of offence so that death penalty awarded is a mistake of the law. It should also be well noted that there are various judgement given by the High Court and the Apex Court and numerous and substantive laws to confirm that if any person had been a juvenile at the time of committing the offence, it can be a strong ground for consideration at any stage of the case. He has already spent more than 11 years languishing inside the four walls of the prison. We would like to bring to light the miscarriage of justice in this case where in a 13 year old juvenile who committed an offence has become a grown up man inside the prison meant for major and hardened criminals. So we want to request you to consider this sensitive matter of a juvenile in conflict with law and ask your august office and Honourable self to cancel the punishment of death penalty awarded to the juvenile in this case.

Yours truly

Adv. Asim Sarode Adv. Smita Lokhande Jagriti Sanjay Jadhav Mohat

Human Rights Activist Legal Aid Lawyer Student Intern Social Worker Enclosures: Transfer certificate of Niranaram Chetanram Chaudhari and other papers with respect to his proof of age. (All attested copies)"

(quoted verbatim from the paperbook)

6. That letter, as pleaded in this application, was forwarded to the Government of Maharashtra eliciting the State Government's comments on such claim of juvenility. There were subsequent exchange of communications among the officials on the question of his age determination. In a letter originating from the Superintendent, Yerawada Central Jail, Pune addressed to Additional Secretary, Home Department, Maharashtra (which is Annexure A-13 to the present application), the Jail authorities recorded that the Medical Superintendent, Sassoon hospital, Pune was intimated by the applicant that he had studied in a Government School at Jalabsar and his name in the school was Niranaram. It was in this communication dated 19th January 2007 a reference was made to his name being Niranaram. It does not appear, however, that any further age determination test was carried out. The said communication reads:-

"With reference to the above subject, orders were given to present a medical report regarding the current age of the condemned prisoner C1871 Narayan Chetanram Chaudhari. Accordingly, the said prisoner was sent to the Hon Medical Superintendent, Sassoon Hospital, Pune and the he was requested through letter NV1/ AVT/ 64/ 2007 date 8/1/2000 to give a medical report about the age of the prisoner.

In his letter no SSR/ Prisoner/ 26/ 06 date 8/1/2007 about the age of the prisoner, the Hon. Medical Superintendent noted that, "after speaking to the prisoner, it appears that his actual age can be found out through his school records. His name in school was Niranaram Chetanram Chaudhari and he has studied in the Government School in Julabsar until grade 3. The village is in Dungargadh Taluka, earlier Churu District, now Bikaner District. If you obtain a certificate from that school it could be useful." We have attached a photocopy of the said letter. Similarly, photocopies of the prisoner's earlier mercy petition submitted by his lawyer Mr. Aseem Sarode along with his school certificate are also attached. Photocopy of the school certificate submitted by the prisoner is being attached.

Presented for information and further action."

(quoted verbatim from paperbook)

7. Thereafter, a writ petition was filed in this Court under Article 32 of the Constitution of India by the applicant representing himself as 'Narayan @ Niranaram'

seeking quashing of the order of punishment imposed upon him on the ground of him being a juvenile on the date of commission of offence. In this petition, apart from the aforesaid certificates, the applicant had relied on a "Family Card" of the Rajasthan Government issued in 1989, recording the age of Nirana to be of 12 years as also the aforesaid Transfer Certificate issued on 15th August 2001 recording Niranaram's date of birth as 1st February 1982. In both these documents, Chetanram's name appears as father of Niranaram. This writ petition, registered as W.P. (Criminal) No. 126 of 2013, was dismissed by a two-Judge Bench of this Court on 12th August 2013 with the following order:-

"UPON hearing counsel the Court made the following

O R D E R

"We are not inclined to entertain this Writ Petition under Article 32 of the Constitution of India and the same is dismissed."

8. This application was instituted on 30th October 2018. When it was taken up for hearing, a Coordinate Bench by an order passed on 29th January 2019 had referred the matter to the Principal District and Sessions Judge, Pune to decide the juvenility of the applicant keeping in view the provisions of Section 9(2) of the 2015 Act. This order reads:-

"UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The applicant - Narayan Chetanram Chaudhary has filed an application (Crl.M.P.No.5242 of 2016 in R.P.(Crl.)Nos.11391140/2000 in Crl.A.Nos.25-26/2000) seeking review of the final judgment of this Court dated 05.09.2000 in Criminal Appeal Nos.25-26 of 2000, upholding his conviction under Sections 342, 397 , 449 and 302 of the Indian Penal Code (hereinafter referred to as the `IPC') and the sentence of death awarded to him under Section 302 IPC by reopening the Review Petition(Crl.)Nos.11391140 of 2000, which were dismissed by this Court on 24.11.2000. The applicant has also filed an application (Crl.M.P.No.157334 of 2018 in R.P. (Crl.)Nos.1139-1140/2000 in Crl.A.Nos.25-26/2000) under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') seeking a declaration that he was a juvenile at the time of commission of offence. The applicant has placed certain additional documents to prove his juvenility at the time of commission of offence.

On 31.10.2018, when the matter came up before this Court for hearing, the counsel for the State was directed to take instructions on the additional documents on the question of juvenility of the applicant. However today, the learned counsel for the respondent-State submits that he has not got any instructions in that regard so far. The instant case reflects gross lethargic and negligent attitude of the State. In view of the pendency of the matter, we are restrained from observing anything further.

Keeping in view Section 9(2) of the Act, we have no other option but to refer the matter to the Principal District and Sessions Judge, Pune, to decide the juvenility of the applicant. Accordingly, we direct the Registry of this Court to send the application (Crl.M.P.No.157334/2018 in R.P.(Crl.) Nos.11391140/2000 in Crl.A.Nos.25-26/2000) along with xerox copy of the documents, relied upon by the applicant, to the Principal District and Sessions Judge, Pune to decide the juvenility of the applicant. If notice is given to the applicant, he is directed to produce all the original documents before the concerned Court in support of his claim of juvenility at the time of commission of offence. The Principal District and Sessions Judge, Pune is directed to send a report to this Court, preferably within a period of six weeks. We hope and trust that the Principal District and Sessions Judge, Pune shall decide the juvenility of the applicant within the time stipulated hereinabove.

List the matter immediately after receipt of report from the Principal District and Sessions Judge, Pune."

9. In pursuance of direction of this Court, the Principal District and Sessions Judge (we shall henceforth refer to him as the "Inquiring Judge") gave his report sustaining the applicant's claim for juvenility. The de-facto complainant, a family member of the victims has filed an application for intervention. That application is registered as I.A. No. 58515 of 2019. We allow this application. Mr. Basant, has argued in support of this finding, whereas Mr. Patil and Mr. Chitaley, learned counsel for the State and the intervenor (de-facto complainant) respectively have asked for rejection of the report and dismissal of the application. In his report, the Inquiring Judge had examined the following documents:-

*"1. A Transfer Certificate dated 15/08/2001, issued by Rajkiya Adarsh Uccha Madhyamik Vidylaya, Jalabsar Shiksha Vibhag, Rajasthan in the name of Niranaram s/o Chetanram, resident of Jalabsar, District Churu, showing the date of birth to be 01/02/1982. (**Annexure- 'I-1'** in his report).*

*2. The Certificate of Date of Birth of Niranaram s/o Chetanram, dated 30/01/2019, issued by the Headmaster, Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar, Shridungargarh (Bikaner). (**Annexure' I-2'** in his report).*

*3. A copy of School Register issued by Headmaster, Rajkiya Adarsh Uccha Madhaymik Vidyalaya, Jalabsar, Shridungargarh, (Bikaner), dated 07/02/2019. (**Annexure- 'I-3'** in his report**).***

*4. A Certificate of Bonafide resident dated 10/08/2009, issued by the Tahasildar, Shridungargarh, Bikaner in the name of Niranaram s/o Chetanram, resident of Jalabsar, TahasilShridungargarh, District-Bikaner. **(Annexure- 'I-4'** in his report).*

*5. A Certificate of Other Backward Class, issued by the Tahasildar Shri dungargarh, Bikaner, dated 10/08/2009, in the name of Niranaram s/o Chetanram, resident of Jalabsar, District-Bikaner. (**Annexure- 'I-5'** in his report).*

*6. A copy of Notification dated 23/03/2001 issued by the State of Rajasthan, regarding inclusion of Tahasil has Dungargarh in District Bikaner with effect from 01/04/2001, by removing the same from District Churu. (**Annexure- 'I-6'** in his report).*

*7. A certificate issued by the Sarpanch, Grampanchayat Udrasar, Shridungargarh, certifying that, Narayan Chaudhary is the same person whose another name is Niranaram s/o Chetanram Chaudhary. (**Annexure- 'I-7'** in his report).*

*8. The Rajasthan Government Pariwar Card No.21711 issued in the name of Chetanram s/o Ratnaram in the year 1989 showing age of 'Nirana' as son of Chetanram to be of 12 years. Further, showing Anada, Mukhram, Birbal to be the brothers of 'Nirana'. (**Annexure- 'L-1'** in his report).*

*9. A T.C. Form issued by Rajkiya Madhyamik Vidyalaya Udrasar, Tahasil-Shridungargarh, District-Bikaner, dated 19/09/2003, in the name of Anadaram s/o Chetanram Sanatan. (**Annexure- 'L-2'** in his report**).***

*10. A Transfer Certificate, dated 15/07 /1994 in the name of Mukhram s/o Chetanram issued by Rajkiya G. R. Mohata Uccha Madhyamik Vidyalaya, Shridungargarh, Bikaner. (**Annexure- 'L3'** in his report).*

*11. A photocopy of Proforma for verification of age examination, dated 24/08/2005 regarding Narayan Chetaram Chaudhary. (**Annexure-'J-1'** in his report)"*

(quoted verbatim from the paperbook)

10. The reasoning and the finding of the Inquiring Judge in his report of 12th March 2019 were in the following terms:-

"38) So far as the inquiry directed to be conducted by this Court is concerned, at the outset, the relevant provisions of law with regard to the inquiry as to juvenility has to be mentioned for reference. The provisions under the Act have been mentioned above.

*39) As per section 2(35) of the Act, Juvenile means a child below the age of 18 years. The authorities referred above, specifically referring to retrospectivity as to consideration of the application of present law to the fact of juvenility is concerned, there cannot be any dispute about it. Hence, Section 9(2) of the Act is a relevant provision on the basis of which the petitioner has filed a petition before the Hon'ble Supreme Court of India for declaration that he was a child under the Act. The said provision is reproduced above. In the case of "**Raju -vs- State of Haryana [(2019) 14 SCC 401] "** there is a reference to Rule 7 A of the Juvenile Justice (Care and Protection of Children) Rules 2007.*

The said rule deals with making of inquiry by the Court in the claim of juvenility. Sub-Rule 3 of Rule 12 of the said Rules has stated about the procedure to be followed for age determination. After the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force, the relevant provision relating to the procedure to be followed is U/sec.9 of the Act. Similarly, section 94 of the Act deals with presumption and determination of age. For ready reference, all these provisions have been reproduced above.

*40) The authorities of **"Surendra Kumar -vs- State of Rajasthan [(2008) SCC OnLine Raj 138]"** and **"Shah Nawaz -vs- State of Uttar Pradesh and Another [(2011) 13 SCC 751]"** are relevant with reference to the school record. Similarly, the authority of "**Surendra Kumar (supra)**" is useful regarding entry in electoral roll. The authority of "**Darga Ram alias Gunga -vs- State of Rajsthan [(2015) 2 SCC 775]**" is useful regarding ossification test. All these cases have to be considered with reference to the case of "**Raju (supra)**" and the provisions of law noted above.*

41) As per the provision in section 94 above, in case of doubt regarding whether a person is child or not the process of age determination shall be undertaken and evidence shall be sought to obtain the date of birth certificate from the school or matriculation or equivalent certificate from concerned examination board, if available. The certificate given by Corporation, Municipal Authority or Panchayat can also be obtained and in the absence thereof, age can be determined by ossification test.

*42) Therefore, if Rule 7 A of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is read with it's Rule 12 and the present Section 9 and Section 94 of the Act, it is clear that, the date of birth from the school certificate or matriculation certificate or a certificate of Corporation etc. is relevant consideration. Thus, preference has to be given to the School Certificates. Even in the case of "**Raju (supra)"** the Hon'ble Supreme Court of India made it abundantly clear that the school certificate would be relevant for the name as well as date of birth.*

43) In view of the above provisions of law, and the authorities placed on record, I proceed to examine the documents to see whether the documents relied on by the petitioner are genuine and authentic and whether those can be relied on to decide juvenility. The submissions made by learned DGP and learned advocate for the petitioner will be looked into simultaneously.

*44) The Police Officer had visited the Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar. He has recorded statement of the Incharge Head Master Namrata Prabhusing with reference to the document at serial no.1 **(Annexure- 'I-1')**. The said document admittedly, is in the name of "Niranaram s/o Chetanram". She has stated that, the said document was issued by her school on the basis of the register kept in the school. She also certified that, the admission no. 568 is correct as per the register maintained. The copy of register, which is the document at serial no. 3 **(Annexure- 'I-3')** was also found by the Police Officer to be the correct copy of the register kept by the school. The name of "Niranaram s/o Chetanram" can be seen in such register. As per such register, the date of birth of "Niranaram" is 01/02/1982. Even as per document no.1, the date of birth of "Niranaram" is 01/02/1982. With regard to document at serial no.2 (**Annexure'I-2'**) , the Police Officer found that the same was issued by the school whose stamp it bears. Merely because it's second copy was not found in the school or that the relevant register had some overwriting of names, though not of the name of "Niranaram", these documents cannot be discarded. The documents at serial Nos. 1 to 3 appear to have been issued on the basis of the school record. "Niranaram" was admitted in the school on 01/04/1986. Thus, the transfer certificate dated 15/08/2001 i.e. the document at serial no.1 is the first Certificate.*

45) The Police Officer collected the copies of letter given by "Mukhram" to the Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar for obtaining birth certificate of his brother. Such copies are produced with report Exh.16. Similarly, a fresh certificate, addressed to the Police Officer was also given by the Head Mistress dated 23/02/2019 and it is collected and filed with his report by the Police Officer with Exh.16. Hence, the documents at serial nos.1 to 3, has a genuine source and those are authentic documents. It is a fact that, these documents have not disclosed the name "Narayan" thereon. This aspect will be considered later on, since the purpose of sending the Police Officer was to verify the authenticity of documents only. He was not expected to express his own opinion. It is sufficient that, the documents at serial nos.1 to 3 were issued by the school, the stamp of which is appearing thereon. Therefore, the documents at serial nos. 1 to 3 are found to be trustworthy and authentic documents.

*46) The documents at serial nos. 4 and 5 (**Annexure- 'I-4 & 'I-5'**) are the documents of Bona fide Residence and OBC Caste Certificate issued by the Tahasildar, Shridungargarh. The document at serial no.6 (**Annexure- 'I-6'**) has not been disputed and it shows that, with effect from 01/04/2001 TahasilShridungargarh, which was earlier in District Churu was removed therefrom and included in*

the District Bikaner. Hence, though the certificate dated 15/08/2001 (document no.1) mentions the District Churu, by virtue of the notification dated 23 /03/2001, village Jalabsar from Shridungargarh has been included into Bikaner District. The certificates at document serial nos. 4 and 5 has a mention of District Bikaner for village Jalabsar and Tahasil Shridungargarh. These certificates are dated 10/08/2009. Therefore, it is obvious that, the name of District Bikaner has been mentioned thereon.

47) The documents at serial nos.4 and 5 i.e. the certificates issued by Tahasildar can be said to be authentic and genuine. The Police Officer had visited the office of Tahasildar and verified the entries made of both the certificates in the register maintained by the Tahasildar. A statement of Tahasildar named Bhawanisingh s/o Prabhudan was also recorded by the Police Officer. His statement is sufficient to show that, both the certificates at serial nos.4 and 5 were issued by the office of Tahasildar, Shridungargarh, District Bikaner. Copies of concerned registers have been collected by the Police Officer and submitted with his report. The serial numbers of the entry made in the registers are matching to the serial numbers on the certificates in the documents at serial nos.4 and 5. Therefore, there is no reason to consider that, the register was not properly kept. The copies of register produced by the Police Officer have been certified by the Tahasildar Shridungargarh, District Bikaner. As such, the certificates of documents at serial nos.4 and 5 can be said to have been issued by the Tahasildar Shridungargarh, District Bikaner. As such, the source is genuine making those documents genuine and authentic. Admittedly, the name thereon is "Niranaram s/o Chetanram" and not "Narayan".

*48) With regard to document at serial no.9 (**Annexure- 'L-2'**) , it is a certificate in the name of "Andaram s/o Chetanram". The Police Officer had visited the Rajkiya Madhyamik Vidyalaya Udrasar to examine the T.C. Form of "Andaram". He also recorded statement of a Lecturer named Poonam Jairam Singh from the said school. She was Incharge Head Mistress of the school. According to her, the certificate of T.C. Form i.e. document at serial no.9 was issued by her school. As such, merely for the reason that it's copy was not there, the said T.C. Form cannot be discarded. The T.C. Form was given on the basis of school register. Copy of such school register was collected and the same has been produced by the Police Officer with his report. At Serial No.1269 thereon, there is the entry of the name of "Andaram s/o Chetanram". Thus, the certificate of document at serial no. 9 is also genuine and authentic.*

*49) With regard to document at serial no.10 (**Annexure- 'L-3'**) , no claim is made by the advocate for petitioner and he expressed that he would not be in a position to comment as to how the original record corresponding thereto was found to be of some other student. As such, the document at serial no.10 cannot be relied on. The document at serial no.8 (**Annexure- 'L-1'**) is the Pariwar Card. With regard to such document, the Police Officer recorded statement of Gramsevak, who has stated that, the record of the year 1989 was not available in the Grampanchayat Office. The inquiry made by the Police Officer was misdirected since he was required to make inquiry with the Development Officer, Panchayat Samiti Shridungargarh regarding Pariwar Card i.e. the document at serial no.8. Since, no such inquiry was made, it can be said that, the State did not seriously search for the authenticity of the Pariwar Card. As discussed earlier, the document at serial no.9 is genuine and it is in the name of "Andaram". The name of his father is "Chetanram". The documents at serial nos.1 to 5 show the name of father to be "Chetanram". The school records similarly indicate. Moreover, the name of the village and District besides the name of father of "Niranaram" and "Andaram" is the same. As such, there is ground to believe that "Chetanram" is the father of "Niranaram" and "Andaram". The Pariwar Card i.e. document at serial no.8, is in the name of "Chetanram". The name of Village is Jalabsar and the names "Anada" and "Nirana" can be seen therein to be the sons of "Chetanram". As such, the Pariwar Card i.e. the document at serial no.8 can very well be relied on.*

*50) The document at serial no.7 (**Annexure- 'I-7'**) has been reported by the Police Officer to be forged document. It has been issued by Gauradevi as a Surpanch of village Udarasar. She had certified in the document at serial no. 7 that, "Narayan Chaudhary" and "Niranaram" is the name of same person. Her statement, statement of her son Jetharam s/o Todaram and one villager named Udaram was recorded by the Police Officer. All of them disowned the document at serial no.7. The Police Officer however, has collected one more document having the signature of Surpanch Gauradevi and recorded statement of one Kesraram who was Gramsevak, in support thereof. However, the signature of Sarpanch on the document collected by the Police Officer having reference to the statement of Kesraram and her signature on document at serial no. 7 appear to be identically same. As such, in the circumstances when Gauridevi admitted that, she was a Sarpanch, the document at serial no. 7 cannot be doubted as to the signature of the Sarpanch. Gauradevi was not able to see and not able to read. As such, the statements of Jetharam and Udaram would be not be*

much relevant, when a document for comparison of signature has been collected by the Police Officer. The signature of Sarpanch thereon and document at' serial no. 7 appear to be identical. Hence, even the document at serial no. 7 can be considered.

*51) As per Section 94 of the Act, only when the school certificate or the certificate of Panchayat and Corporation etc. is not found, the ossification test can be resorted to. Since, in this case authentic school certificates are on record, at this moment, there is no need to consider the document at serial no.11 (**Annexure-'J-1'**).*

*52) In view of the documents mentioned above, it appears that, "Niranram" and "Anadaram" are brothers. It also appears that, "Chetanram" is their father. They are resident of Jalabsar. The school record, which is discussed in foregoing paragraphs, indicate the date of birth of "Anadram s/o Chetanram" to be 04 /04/1980, while the date of birth of "Niranaram" appears to be 01/02/1982. Thus, from these school documents it can be said that, "Anadaram" is elder to "Niranaram". In the Pariwar Card i.e. document at serial no.8, same is the position since "Anadaram" is appearing to be elder to "Niranaram". Here, since the name of father of both these persons is the same, and their village is also the same, help can be taken from the observations made in the case of "**Raju (supra)"** by the Hon'ble Supreme Court of India. If the certificates are read with reference to the document at serial no. 7, it can be said that "Niranaram" and "Narayan" is one and the same person. There is nothing on record to show that, "Chetanram" had another son by name "Narayan". Even the certificate (document at serial no. 7), is not considered, there is sufficient material on record to indicate that, the school documents and the documents issued by the Tahasildar and the Pariwar Card are genuine and valid. These documents make it clear that, "Niranaram" is brother of "Anadaram". Hence, both are siblings. There is nothing to show that, any other person by name "Niranaram Chetanram" was found at village Jalabsar. Therefore, from the documents on record, the document at serial no. 7 can also be believed. Though, none of the documents mention the name "Narayan", the name "Niranaram" has to be said to be another name of "Narayan".*

53) Though, not for exclusively basing the decision, but for the general observation in ordinary sense, it can be said that, people in Rajasthan may be accustomed to pronounce "Niranaram" easily, but the people in the state of Maharashtra, especially in Pune, may find it difficult to pronounce "Niranaram". For such reason, there is possibility of the pronunciation mistake to call "Niranaram" as "Narayan" in Pune.

54) If "Niranaram" is not "Narayan" and "Narayan" is some other person, then the State should have brought clear documentary evidence of school record of "Narayan" showing him to be different person. There is no such record. As such, the police record of the Sessions Case may have shown the name "Narayan" without asking for any identification documents as to his name, in the school record. There is not a single document filed by state to show that the name of "Narayan's" father is not "Chetanram" but its different.

55) In view of the documents of school and the documents issued by the Tahasildar, the date of birth of the petitioner appear to be 01/02/1982. As such, on 24/08/1994 his age would be around 12 years and 6 months. If the Pariwar Card, which was issued in the year 1989 is seen, the age mentioned therein is 12 years. If it is the age mentioned for the year 1989, then in the year 1994, more particularly on 24/08/1994, the age of the petitioner would be 16 years and 8 months. Thus, it is still below 18 years.

56) When the school record is available, ossification test cannot be considered. However, even if the document at serial no.11 is taken into account, the range mentioned is 22 years to 40 years in the year 2005. Thus, for the year 1994 the range would come to 11 years to 29 years. This also supports the certificates, more particularly the documents at serial nos.1 to 5, 8 and 9. In view of the above observations, it is abundantly clear that, on the date of incident i.e. on 24/08/1994 the age of the petitioner was around 12 years and 6 months. Thus, he was a child or a juvenile within the meaning of Section 2(35) of the Act.

CONCLUSION:

57) On 24/08/1994, the age of Niranaram Chetanram was 12 years and 6 months or around the same. Narayan Chetanram Chaudhary is the same person, whose another name is Niranram Chetanram Chaudhary. Hence, I hold that the petitioner was a juvenile on the date of commission of offence.

Hence, the report."

(quoted verbatim from the paperbook)

11. First submission of Mr. Patil is that the question of juvenility cannot be reopened by this application as the applicant had filed writ petition before this Court under Article 32 of the Constitution of India (Writ Petition (Criminal) No.126 of 2013) and this writ petition was dismissed by this Court. He has also submitted that the applicant is relying on records pertaining to another individual as at no point of time earlier he had disclosed that his real name was Niranaram. Even proceeding on the basis that the applicant's actual name is Niranaram, Mr. Patil wants us to discard the entire set of documentary evidences alleging that these documents, particularly the school records, are fabricated. He has highlighted certain discrepancies in the documents themselves as regards the family members of the applicant and their age. In particular, he has submitted that family members of the applicant had created a forged certificate of the Sarpanch, which was marked as annexure I-7 in the report. He has drawn our attention to the statement of the Sarpanch, Gauradevi, as recorded in the Inquiry Report. She had stated, as disclosed in the report, that she had never issued that certificate. He has also taken us through the transfer certificate of Andaram (in some documents referred to as Anadaram and Anandaram), which was marked as L-2 in the report and that of Mukhram, marked as L-3 therein. As it appears from the Inquiry Report, these two persons are brothers of the applicant. He has referred to that part of the report, in which the Inquiring Judge records that the principal of the school, Smt. Namrata had stated that admission number 1317 (which was recorded in the transfer certificate of Mukhram) did not bear the name of Mukhram in school records but the admission number 1317 was in the name of one Babulal Shreechandanmal Bhadani, whose date of birth was 6th June 1966. The principal of the school further stated that said transfer certificate was not signed by the then principal of the school and it was never issued by the school. It has also been stated by Mr. Patil that the family members of the applicant had obtained the residence certificate of Niranaram by affixing the photo as also the caste certificate on 10th August 2009 issued by the Tehsildar officer Shri Dungargarh when the applicant remained imprisoned.

12. Mr. Patil has also questioned the manner in which the inquiry was made. His main submission is that the expression of inquiry as employed in Section 9(2) of the 2015 Act ought to import the same meaning given to it under the Section 2 (g) of the Code of Criminal Procedure, 1973 ("1973 Code"). In this regard he has referred to the cases of **Ram Vijay Singh -vs- State of Uttar Pradesh** [2021 SCC OnLine SC 142] and **Ashwani Kumar Saxena -vs- State of Madhya Pradesh** [(2012) 9 SCC 750]. In the case of **Ram Vijay Singh** (supra), a Coordinate Bench of this Court found that the procedure prescribed in Rule 12 of the Rules made under the Juvenile Justice (Care and Protection of Children) Act, 2000 ("2000 Act") is not materially different from provisions of Section 94 of the 2015 Act. He wants us to distinguish the finding made by a Bench of two Judges of this Court in the case of **Ashwani Kumar Saxena** (supra), referring to the judgment in the case of **Abuzar Hossain alias Golam Hossain -vs- State of West Bengal** [(2012) 10 SCC 489]. He has submitted that the Inquiring Judge, to comply with the mandate of Section 9(2) of the 2015 Act, ought to have recorded evidence of the material witnesses on oath for determination of age but he hastily completed the inquiry.

13. Mr. Chitaley's submissions are in the same line. Relying on decision of this Court in this case of **Pawan Kumar Gupta -vs- State (NCT of Delhi)** [(2020) 2 SCC 803], he has argued that once the applicant's plea for juvenility was dismissed, it was not open for him to resurrect the same claim. As regards the name of the applicant,

he has emphasised the fact that the certificate of Sarpanch was forged and there was no documentary evidence to substantiate the claim. With regard to the entry in the voters' list where Niranaram Chetanram Chaudhary's name appears, he has pointed out that the said list of 1993 showed the applicant to be of 18 years. His other submission is that the plea of juvenility ought to be raised in close proximity to institution of the proceedings. On this point the decisions relied upon by him are the cases of **Murari Thakur & Another -vsState of Bihar** [(2009) 16 SCC 256], **Pawan -vs- State of Uttaranchal** [(2009) 15 SCC 259], Mohd. Anwar -vs- State (NCT of Delhi) [(2020) 7 SCC 391] and Surajdeo Mahto & Another -vs- State of Bihar [(2022) 11 SCC 800]. Having regard to the gruesomeness of the offence, and involvement of the applicant having been proved at all levels of judicial hierarchy, he has drawn our attention to the following passage from the case of **Abuzar Hossain** (supra):-

"39.6 Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."

14. As would be evident from the reasoning contained in the said report, substantial stress was laid by the Inquiring Judge on the school admission register, on the basis of which the "certificate" of date of birth was issued. Referring to this document, the original of which we have seen, it has been submitted that the entries therein were not in right sequence. To give illustration, Mr. Patil has submitted that the entry number 550 relates to the incumbent entering class 4 on 16th August 1984 whereas entry number 551 shows the incumbent's entry into class 1 on 4th September 1985. Four other entries, 552, 553, 554 and 565 showed sequence of dates of entry of the incumbents thereof in asymmetric order. In fact, his submission has been that this entry register was manufactured and the pages were manipulated. His further submission on this count is that the date of birth of Niranaram recorded as 1st February 1982 ought not to be accepted, having regard to the provisions of Section 35 of the Indian Evidence Act, 1872 ("1872 Act"). On this count, he has relied on decisions of this Court in the cases of **Ravinder Singh Gorkhi -vs- State of U.P.** [(2006) 5 SCC 584] and **Ramdeo Chauhan alias Raj Nath -vs- State of Assam** [(2001) 5 SCC 714]. On probative value of the entry in the admission register, he has relied on the judgment of this Court in the case of **Birad Mal Singhvi -vs- Anand Purohit** [(1988) Supp SCC 604]. On this point, his submission is that the entry regarding age of a person does not carry much evidentiary value to prove the age in absence of materials on which his age was recorded in the school register. He has also taken us through the "pariwar card" dated 1st January 1989, in which the years of birth of Andaram, Niranaram, and Mukhram ought to be 1976, 1977 and 1979, on the basis of age of the said individuals reflected therein. As per the school records, these years ought to have been 1980, 1982 and 1983. Voter's list dated 1st January 1993 carried the age of Niranaram as 18 years. The cases in which the plea of juvenility was accepted by this Court, Mr. Patil's argument is that age determination was made in borderline cases, between 16 and 18 years. He has also highlighted the fact that the time at which the petitioner was produced before the Magistrate after arrest, the Juvenile Justice Act, 1986 ("1986 Act") was operational.

15. We shall first examine the issue of the actual identity of Niranaram. Is he the same person who has been convicted and subsequently sentenced to death as Narayan? Even in the review petition, the applicant described himself as Narayan Chetanram Chaudhary. The filing date of the review petition is 31st October 2000.

From the materials before us, we find that his identity as Niranaram Chetanram Chaudhary surfaced in early part of January 2006, as it would appear from Annexure A-7 to the application. This communication has been captioned as "Mercy Petition on behalf a juvenile to the President." In this Mercy Petition, the applicant has been referred to as Niranaram. Certain public spirited individuals including a lawyer is a signatory to this "Mercy Petition". Next comes a letter addressed to the Home Department of the Maharashtra Government by the Superintendent, Yerawada, Central Jail dated 19th January 2007. We have reproduced the text of this letter in earlier part of this judgment. The said communication to which we have referred earlier also describes the applicant as Narayan Chetanram Chaudhary and his date of birth in this communication is shown to be 1st February 1982. This communication was dated 24th January 2006.

16. In the writ petition filed before this Court, a copy of which has been annexed at page 40 of the application, it has been stated in grounds C, D and E: -

"C. For that the present Petitioner was ostracized and disowned by him family immediately after his arrest in connection with the said incident. Hence the present Petitioner had no support or effective means of defending his case. Also the present Petitioner did not possess any material indicating his true age.

D. For that recently the father of the present Petitioner after a gap of around 18-19 years re-established contact with the present Petitioner. Form his father the present Petitioner for the first time received documents to indicate his real age at the time of the incident. The present Petitioner seeks to rely on the following documents in order to substantiate his case-

i. ***'Family Card'*** *– issued by the State of Rajasthan to the father of the present Petitioner, dated 17.2.1992 which records the name of the present Petitioner as 'Nirana' and his age as 12 years.*

ii. ***Transfer Certificate*** *– issued by the Education Department, Rajasthan which records the name of the present Petitioner as 'Niranaram' and his date of birth is recorded as 1.2.1982.*

iii. ***'Ration Card'*** *– issued by the State of Rajasthan to the father of the present Petitioner which records the name of the present Petitioner as 'Niranaram'.*

E. For that from the abovementioned documents it becomes clear that the present petitioner's name is 'Niranaram' and his date of birth is 1.2.1982. Thus, on the date of the incident the present Petitioner was 12 years old. Hence the present Petitioner ought to be treated as a juvenile delinquent and hence could not have been tried in a regular trial."

*(***quoted verbatim from paperbook)**

17. This writ petition was filed on 2nd July 2013, supported by an affidavit of one Mukhram, on 8th April 2013. In that affidavit, the deponent Mukhram described himself to be the younger brother of the petitioner. Though this writ petition was not entertained by this Court, we are referring to this part of the writ petition to demonstrate how the applicant started representing or re-representing himself as Niranaram. The present applicant in this writ petition has described himself as Narayan @ Niranaram, son of Chetanram Chaudhary and the same name has been used to describe the applicant in the present application. In the judgment of the Sessions Court (Sessions Case No.462 of 1994), the accused no.1 has been described as Narayan Chetanram Chaudhary. Thus, we find that he had used the name of Chetanram as his middlename at the time of his trial, which obviously refers to his father's name. He has been consistent in describing his father's name. Now, the question we will have to address is as to whether the very act of posing himself as Niranaram at such a belated stage is to be accepted or not. In paragraphs 53 and 54 of the Inquiry Report we find that the Inquiring Judge had accepted the stand of the applicant that Narayan and Niranaram is the same person.

18. The applicant has sought to establish his identity as Niranaram relying on a series of documents where his father's name has been shown as Chetanram. These include three documents originating from the school, Rajkiya Adarsh Uccha Madhyamik Vidyala, Jalabsar. The said institution is a government school. It uses the letterhead of the State Government with the national emblem. Copies of these documents have been marked "I-1", "I-2" and "I-3" in the Inquiry Report. The Tehsildar of Shri Dungargarh, Bikaner has also issued a certificate dated 10th August 2009 to the effect that Niranaram is bonafide resident of the Jalabsar and he has been referred to therein as son of Chetanram. The father's name of the applicant also appears in the OBC Certificate, which is marked "I-5" to the application. This certificate is also dated 10th August 2009. A certificate by one Gauradevi, the Sarpanch of Udrasar gram panchayat, Shri Dungargarh records that Narayan Chaudhary is the same person as Niranaram. Subsequently, we find from the report of the Inquiring Judge that both Gauradevi and her son had disowned issuing any such certificate. But in the same report, it has been recorded by the Inquiring Judge that he had matched the signature of Gauradevi appearing in the said certificate with her signature in another document and found them to be identical. This appears from paragraph 50 of the report which we have quoted above. In the Pariwar Card of Chetanram, which is annexure "L-I" to the report, 'Anada', 'Mukhram' and 'Nirana' have been referred to as his sons. This also has different dates. The year 1989 appears to be the date of issue whereas the inspection dates show 22nd September 1991 and 17th February 1992. In the said card, the applicant's age is shown to be 12 years. Thus, there are age variations of the applicant as appearing in the family card with that of the school records and we shall deal with that aspect later in this judgment. We are referring to these documents here mainly to examine the applicant's claim that he is the son of Chetanram. In the case of **Raju** (supra), it has been observed that the name of the father on certificate can be a factor for identifying a person with two names floating. The two transfer certificates (Annexures L-2 and L-3 of the report) of Anada and Mukhram also carry the name of Chetanram as their father. Again, so far as the transfer certificate of Mukhram is concerned, there is doubt about its originality. But we find that there is constant and consistent reference to Chetanram as father of Andaram, Mukhram and Niranaram appearing in all these documents.

19. The State has taken a plea that at the time of inquiry, sufficient time was not available to them to verify this fact. There are several documents where Niranaram has been shown to be the son of Chetanram. After the Inquiry Report was made in 2019, substantial time has lapsed since we heard the matter. No material was produced by the State to demonstrate that there was any other Niranaram in Jalabsar or another Chetanram. It is a fact that the claimant for juvenility has to establish his case. But it has also to be appreciated that a death row convict in prison for over 28 years would be under severe limitations in retracing his school records and other forms of age-proof. In such circumstances, in absence of any contrary evidence we accept the finding in the Inquiry Report given by the Principal District and Sessions Judge, Pune that Niranaram has to be said to be another name of "Narayan". Our opinion on this point would not vary even if we reject the certificate of the Sarpanch. That certificate plays a supportive role in determination of the name of the applicant. Moreover, in all these documents, Jalabsar has been shown as the village of which Chetanram and his family were residents, and this was the place from where he was arrested. In our opinion, the applicant's original name was Niranaram and the

applicant has discharged his part of onus to establish that it is he who has been tried and convicted as Narayan. We accept the finding of the Inquiring Judge on this point.

20. As regards maintainability of the present application under Section 9(2) of the 2015 Act, in the case of **Hari Ram -vs- State of Rajasthan and Another** [(2009) 13 SCC 211], which authority was quoted with approval in **Abdul Razzaq -vs- State of Uttar Pradesh** [(2015) 15 SCC 637], it has been held that claim of juvenility may be raised before any Court which shall be recognised at any stage even after final disposal of the case. In **Vinod Katara -vs- State of Uttar Pradesh** [2022 SCC OnLine SC 1204] the rationale for raising belated claim of juvenility has been explained by a two-Judge Bench of this Court. **Hari Ram** (supra) and **Abdul Razzaq** (supra) were decisions rendered under the 2000 Act, but so far as 2015 Act is concerned, the same principle ought to apply. Moreover, in proviso to sub-section (2) of Section 9 of the 2015 Act, it has been specifically stipulated that the juvenility claim may be raised before any Court and shall be recognised at any stage even after final disposal of the case. Same line of reasoning has been followed in the cases of **Ram Narain -vs- State of Uttar Pradesh** [(2015) 17 SCC 699] and **Upendra Pradhan -vsStae of Orissa** [(2015) 11 SCC 124]. The State has relied on the case of **Pawan Kumar Gupta** (supra) on this point, resisting the Court's intervention at this stage. The accused in that case had accepted the age determination report made by the Investigating Officer and this was recorded in the order of the concerned Magistrate. As per the said report the accused was not a juvenile. The same plea was raised again at the appellate stage before the High Court which was rejected, referring to the order passed by the Magistrate. In connection with review petition before this Court, the plea of juvenility was raised again, and this was not entertained by this Court. In the said judgment it has been held that once the plea of juvenility is rejected from the stage of Magistrate, the High Court and subsequently the Supreme Court, the convict cannot be permitted to reagitate that plea. In the applicant's case, juvenility plea has been raised for the first time before this Court, albeit after dismissal of his review petition against his conviction and sentence having been upheld by this Court.

21. It is a fact that the juvenility plea was raised in Writ Petition (Criminal) No. 126 of 2013 and this writ petition was dismissed in limine. But this dismissal would not operate as res judicata so far as the present application is concerned. Relief under Article 32 of the Constitution is discretionary in nature and the order of this Court dismissing that petition is not supported by reason. A petition under Section 9 (2) of the 2015 Act contemplates statutory remedy, plea for which can be raised at any stage. In our opinion, on juvenility plea, if a writ petition is dismissed in limine, such order would not foreclose the option of an accused (or a convict) to make plea for juvenility under sub-section (2) of Section 9 of the 2015 Act.

22. We shall, accordingly, proceed to examine his claim of juvenility, which has been sustained by the Inquiring Judge in the aforesaid report. In the case of **Murari Thakur** (supra) a two-Judge Bench of this Court declined to entertain juvenility plea in an appeal in which the appellants had been convicted under Sections 302/34 of the 1860 Code. Such a plea was raised before this Court at the appellate stage. A two-Judge Bench of this Court opined that this point could not be raised at that stage because it was neither taken before the Trial Court nor before the High Court. It was further observed in this judgment that the question of age of the appellant accused was a question of fact on which evidence, cross-examination etc. was required and therefore it could not be allowed to be taken up at a late stage. This was a case under

the 2000 Act, but under the said Act also, provisions of Section 7A thereof is similar to Section 9(2) of the 2015 Act. In our opinion, this view cannot be held to be good law having regard to the specific provisions contained in the proviso to Section 9(2) of the 2015 Act. Moreover, there is a subsequent decision from a Bench of same strength in the case of **Ashwani Kumar Saxena** (supra) in which this Court has examined the manner in which the documents pertaining to establishment of juvenility ought to be examined and we shall deal with this authority later in this judgment. Another two-Judge Bench of this Court, in the case of **Ajay Kumar -vs- State of Madhya Pradesh** [(2010) 15 SCC 83], referring to Section 7A of the 2000 Act has held that an inquiry is to be conducted by the Court before whom such a plea is raised and the Court has to render a finding as to whether or not the claimant was a juvenile. As per this judgment, in case the claimant is found to be juvenile, Court has to refer the matter to the Board for passing appropriate order and in such a situation, sentence passed by the Court shall have no effect.

23. In **Pawan** (supra) a Bench of Coordinate strength opined that in a case where plea of juvenility is found unscrupulous or the materials in support of such plea lack credibility and do not inspire confidence and even prima facie satisfaction of the Court is not made out, a further exercise to examine such a claim would be unnecessary. In that judgment, this Court reflected upon the documents based on which the juvenility claim was being raised and came to such a finding. So far as this case is concerned, in the order passed on 29th January 2019, the context in which inquiry was directed has been expressed. The relevant part of this order has been quoted earlier in this judgment. Thus, the observations made in the case of **Pawan** (supra) do not apply in the facts of this case, where inquiry has already been directed.

24. In **Mohd. Anwar** (supra) and **Surajdeo** (supra), (in the latter case, author of this judgment was a party), two Coordinate Benches of this Court opined that mitigating circumstances like juvenility of age ordinarily ought to be raised in trial itself and belated raising of such plea may also underline the lack of genuinity of the defence case. In the case of **Surajdeo** (supra), plea of juvenility was raised for the first time before this Court on the basis of school leaving certificate alongwith admit card issued by the Bihar School Examination Board. The Court found that the name of the juvenile claimant did not appear on the documents. But these were decisions rendered in the facts of the respective cases and neither of these two cases lay down absolute proposition of law that the juvenility plea cannot be raised at the stage the applicant has filed his petition under Section 9(2) of the 2015 Act. Moreover, this Court has already directed inquiry and we do not think the applicant's plea can be rejected on the ground of being belated claim in the present case.

25. Next comes the question as to whether the course adopted by the Inquiring Judge was in terms of the provisions of the 2015 Act or not. Mr. Patil, relying on Section 103 of the 2015 Act submitted that the inquiry had to be in terms of the Code of Criminal Procedure, 1973. Section 103 of the 2015 Act reads:-

***"103. Procedure in inquiries, appeals and revision proceedings**.—(1) Save as otherwise expressly provided by this Act, a Committee or a Board while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trial of summons cases.*

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)".

So far as the question of determination of age through inquiry by the Court, no specific statutory procedure has been brought to our notice. The statutory provision contained in Section 94 of the Act is relevant in this regard and the said Section stipulates:-

***"94. Presumption and determination of age**.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

26. One of the arguments on behalf of the State has been that the Inquiry Report was prepared in a flawed manner, not conforming to the provisions of the 1973 Code. In this regard, Mr. Patil drew our attention to Section 2(61) of the 2015 Act, which stipulates that "all words and expressions used but not defined in this Act and defined in other acts shall have the same meaning respectively assigned to them in those Acts". On this count, his main argument has been that the Inquiring Judge ought to have taken evidence in the manner provided in 1973 Code while returning his finding on juvenility of the applicant.

27. It is apparent that the Inquiring Judge has conducted the inquiry typically as a fact-finding inquiry is conducted and has not followed the procedure of summons trial. The documents on which he relied on were not formally proved as is the normal procedure in a trial and there was no examination or cross-examination on oath. But as it would be evident from sub-section (1) of Section 103 of the 2015 Act, the prescription for following the procedure in summons cases is for the Juvenile Justice Board ("Board") or the Child Welfare Committee ("Committee") while holding any inquiry under the 2015 Act. Under Section 9(2) of the 2015 Act the Court also has been empowered to make an inquiry if the Court itself is of opinion that the person was the child on the date of the commission of offence. The mandate of following summons procedure has not been prescribed so far as inquiry which ought to be conducted by the Court. The manner in which evidence could be taken has not been mandated. The manner in which the Court shall conduct such inquiry has also not been specifically prescribed. The procedure which has been followed by this Court in the present case has been to direct a Principal District and Sessions Judge, a Senior Judicial Officer at the State Level, to conduct inquiry within a given timeframe. As we find from the Inquiry Report, the Inquiring Judge had directed a police officer to make authentication of the documents relied upon by the applicant and after the police officer gave his views on the authenticity of the documents, finding discrepancy in some of them. Thereafter, hearing was conducted before the Inquiring Judge, in which prosecution was represented by an officer holding the rank of Director General of

Police ("DGP"). Both the prosecution and police had filed report and statement before the Inquiring Judge. The Inquiring Judge himself applied his mind considering the submissions of the prosecution as also the learned advocate of the applicant and the applicant himself was produced before the Inquiring Judge. The Inquiring Judge had marked the documents filed before him as exhibits. The Inquiring Judge examined each of the documents upon ascertaining the stand of the DGP and also the advocate representing the applicant. In application filed before us, extract from the school register was annexed which showed applicant's date of birth as 1st February 1982. Before the Inquiring Judge, we find that in addition to the documents annexed to the application, a certificate of date of birth issued by the school authority was also furnished by the applicant. The latter was issued on the basis of school register but this certificate was dated 30th January 2019.

28. We find no flaw in the procedure which has been adopted by the Inquiring Judge. So far as the procedure for making an inquiry by the Court, in our opinion Section 9(2) of the 2015 Act does not prescribe scrupulously following trial procedure, as stipulated in the 1973 Code and the Indian Evidence Act, 1872. Section 9 of the 2015 Act reads:-

"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."

The requirement to follow the Code is "as far as practicable," as per Section 103 (2) of the 2015 Act. The legislature, thus, while prescribing the summons trial procedure for inquiry by Board or Committee on age determination of a juvenile claimant has not mandated any specific procedure for inquiry by the Court. It follows, by implication, that the Court can formulate its own procedure for conducting inquiry on this count. So far as the present case is concerned, this Court had directed inquiry to be conducted by the Inquiring Judge at the first level, before whom the applicant and the prosecution had sufficient opportunity to present their version. The report of the Inquiring Judge was subsequently examined by us, again giving adequate opportunity to both sides. We have ourselves called for the original admission register from the school. The principal-incharge of the school, Namrata Prabhusingh had given a statement in writing at the inquiry stage, and the translated version of which appears at page 311 of the Inquiry Report. She has stated:-

"With reference to aforesaid, the name of Niranaram s/o Chetanram, Jalabsar has been recorded in the Student Admission Register of our Rajkiya Adarsh Higher Secondary School, Jalabsar, Shreedungargad at Student Admission No. 568. In accordance with the said record, his date of birth is written as 01.02.1982. No student by name Narayan was in our school."

(quoted verbatim from paperbook)

29. In **Ashwani Kumar Saxena** (supra) two-Judge Bench of this Court, dealing with the provisions of the 2000 Act observed and held:-

"25. Section 7-A, 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 JJ Act. The criminal courts, Juvenile Justice Board, committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The 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 the JJ Rules. Few of the expressions used in Section 7-A 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 7-A has used the expressions "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.

26. *Rule 12 which has to be read along with Section 7-A 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" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re-emphasise the fact that what is contemplated in Section 7-A 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 word "inquiry" has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.*

27. *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.*

"Inquiry" as defined in Section 2(g) CrPC reads as follows:

"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;" 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.

"Investigation" as defined in Section 2(h) CrPC reads as follows:

"2. (h) 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"

The expression "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 in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. *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 to some offences committed. We find in very many cases that the court/the Juvenile Justice 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 JJ Act, following the procedure laid down under Rule 12 and not following the procedure laid down under the Code.*

29. *The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the 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 7-A 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 the inquiry.*

30. *Consequently, the procedure to be followed under the JJ 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 7-A of the Act. In 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 7-A read with Rule 12.

31. *We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 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.*

32. *"Age determination inquiry" contemplated under Section 7-A of the Act read with 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 needs to 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 needs to 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 abovementioned 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.*

33. *Once the court, following the abovementioned 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 sub-rule (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 JJ Act also draws a presumption of the age of the juvenility on its determination.*

34. *Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."*

30. The case of **Ashwani Kumar Saxena** (supra) has been referred to in several judgments of this Court and the ratio thereof still holds good. Though that was a judgment delivered under the 2000 Act, the procedure for determining juvenility in the 2015 Act remains broadly the same and hence this authority shall remain valid for an inquiry under the 2015 Act. There is a decision of a Single Judge of the Allahabad High Court (Lucknow Bench) in the case of **Sheo Mangal Singh and Others -vs- State of U.P.** [(1989) SCC OnLine All 605] in which, dealing with the 1986 Act, view has been taken that the word "inquiry" in Section 3 therein means an inquiry under the said Act and not an inquiry under the 1973 Code. In Section 2(t) of the 1986 Act, provisions similar to Section 103 of the 2015 Act had been engrafted. The expression "inquiry", in the manner in which it has been used in the 1973 Code cannot be transplanted in toto so far as the 2015 Act is concerned, to fit the meaning of inquiry therein. It has an element of search or investigation under the 2015 Act, not in the sense these words are used, inter-alia, in Chapters XXIII and XXIV of the 1973 Code, which the Court may require to undertake while determining a juvenility claim. The 1973 Code also contemplates preliminary inquiry under Sections 148 and 174 of the Code and the said expression has not been employed in the 1973 Code to convey a uniform meaning or procedure. We are of the view that the meaning and scope

attributed to the expression "inquiry" in the case of **Ashwani Kumar Saxena** (supra) to be the proper construction of this word and may be followed in dealing with the question of determination of juvenility claim under the 2015 Act. Mr. Patil has argued that the ratio in the case of **Ashwani Kumar Saxena** (supra) may have gotten diluted in view of the judgment of this Court in the case of **Abuzar Hossain** (supra), delivered by a three-Judge Bench. But **Abuzar Hossain** (supra) deals with the context in which inquiry shall be directed under the 2000 Act and Rules made thereunder. This authority does not come into conflict with ratio of the decision in the case of **Ashwani Kumar Saxena** (supra), to the extent the latter judgment explains the meaning and implication of the expression "inquiry" under the 2000 Act and Rules made thereunder. The aim of such inquiry obviously is to determine the juvenility of the claimant. So far as Section 94 of the 2015 Act is concerned, though the said provision deals with determination of age of a juvenile-claimant by the Committee or the Board, in our opinion the documents or tests referred to therein would guide the Court as well in making inquiry of such nature. In absence of any specific legislative mandate as regards the course a Court ought to undertake in an inquiry under Section 9(2) of the said Act, the prescription of the provisions of Section 94(2) provides a safe guidance which the Court ought to follow. The result of such inquiry pronounced by the Court would be in the nature of a declaration on juvenility of a claimant-accused.

31. In the case of **Rishipal Singh Solanki -vs- State of Uttar Pradesh and Others** [(2022) 8 SCC 602], a two-Judge Bench of this Court took this view, considering a large body of cases on this subject and observed: -

"33. *What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:*
33.1. *A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.*
33.2. *An application claiming juvenility could be made either before the court or the JJ Board.*
33.2.1. *When the issue of juvenility arises before a court, it would be under subsections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.*
33.2.2. *If an application is filed before the court claiming juvenility, the provision of subsection (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.*
33.2.3. *When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015 , be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).*
33.3. *That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.*
33.4. *The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.*

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

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

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

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

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

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

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

32. Was the Inquiring Judge wrong in giving his findings? The documents on which he has primarily relied upon are the school register, certificate of date of birth of Niranaram issued by the school authorities on 30th January 2019 and transfer certificate dated 15th August 2001. The latter, however, is not a certificate of transfer showing Niranaram's shifting to another school but this certificate records that he had left from Class III on 15th May 1989. Then there is transfer certificate of Andaram dated 19th September 2003 which shows the date of birth of Andaram as 4th April 1980. There was another transfer certificate before the Inquiring Judge of Mukhram, but this was discarded by the Inquiring Judge as the same did not correspond with the school records. All the aforesaid documents appear to have their origin in the admission register of the school, the original of which we have secured and seen. Apart from the documents of the school, there is a family card, to which we have referred to earlier. The date of issue of Family Card is 1989 and, in this card, issued by the State Government, Nirana's age is shown to be 12 years. But there are two other signatures of authorities on this card, of 1991 and 1992. For this reason, we choose to ignore this document for our inquiry. Apart from these materials, there is extract from the electoral roll which shows age of Niranaram to be 18 years on 1st January 1993. So far as per this recordal, his age at the time of commission of offence would be 19 years. The school documents point to Niranaram's age to be below 16 years in the year of commission of offence. The case of **Abuzar Hossain** (supra) was relied upon by the learned counsel for the State to contend that production of documents of the threshold stage of juvenility-claim is sufficient to call for an inquiry but further inquiry is necessary to examine the authenticity or the genuineness of documents involved. In **Parag Bhati (Juvenile) through Legal Guardian-Mother-Rajni Bhati -vs- State of Uttar**

Pradesh and Another [(2016) 12 SCC 744], in relation to the similar provision under the 2000 Act it has been highlighted that the credibility of documents should be prima facie to direct inquiry. In the cases of **Manoj alias Monu alias Vishal Chaudhary -vs- State of Haryana and Another** [(2022) 6 SCC 187], **Ravinder Singh Gorkhi** (supra) and **Birad Mal Singhvi** (supra) the necessity of the documents being reliable has been stressed for determining the juvenility claim.

33. As we have already stated, the school in question is a government school. The "date of birth certificate" of Niranaram has been issued by the office of the headmaster of the said school. This certificate has been issued on the letterhead of the State Government carrying the national emblem. The principal of the school has in writing disclosed that the content of the admission register is maintained in ordinary course of business. Hence, in normal course the said register would satisfy the test specified in Section 35 of the 1872 Act, of being a relevant fact. The case of **Birad Mal Singhvi** (supra) dealt with age disclosure in relation to election and not under 2015 Act. The latter gives a guideline under Section 94 thereof about the documents which shall be accepted as evidence. The certificate of date of birth has not been accepted by us straightway. In the present application, extract from the admission register has been annexed, supported by an affidavit of the applicant himself. Moreover, we had ourselves called for the original school admission record by our order passed on 8th September 2022, requesting Dr. Manish Singhvi learned Additional Advocate General, State of Rajasthan to ensure production of the same and the said register was produced before us.

34. As regards authenticity or genuineness of the admission register, which forms the basis of certificate of the applicant's date of birth, argument of Mr. Patil is that the whole register was fabricated. His submission is that at the time the extract therefrom was produced before the Inquiring Judge, the same was not paginated. He also argues that the register was not stitched. Further, he has submitted that serial entry no. 566 of the register shows the date of entry of the student to be 2nd February 1980, which is not in order in relation to the other entries. He has also referred certain other entries in the register prior in order to serial no. 568, in which dates of admission of the respective students are earlier than that of the applicant. But these entries, at best, would show some defect in maintaining the records and cannot lead to the conclusion that the entire admission register is fabricated. Reference has also been made to an entry of one Lekhram, that stood against serial no. 423, which reappeared in entry 562. The endorsement of the school in serial no. 423 is that "his name was deleted" whereas against entry no. 562, recordal is "as per previous records". This clearly appears to be the case of re-admission or re-entry in the school. His further stand is that there was interpolation of pages. He has again pointed out that one of the pages (page no. 33) of the register has been stitched in reverse. But these are nitpicking submissions and cannot lead to the conclusion that admission register itself is fake. So far as Niranaram's name is concerned, in the admission register there is no discrepancy. His serial number is 568 which falls in order in which the register is maintained and is in sequence with the admission entries of other students barring few minor discrepancies as regards names in other entries. Even if the register has been freshly stitched and paginated to be sent to this Court, that would not lead to a conclusion that the whole thing has been fabricated. Moreover, there is no clear evidence to demonstrate that at the time of initial inquiry, the register was unstitched or without pagination. We have ourselves seen the register and it is of sufficient

vintage. Thus, we agree with the Inquiring Judge that the date of birth recorded therein was not a fabricated entry.

35. Now there are four other dates reflecting different ages of the applicant. The first is the age in the chargesheet on the strength of which he has been tried, convicted and sentenced, that is 20 years in the year 1994. But the source of disclosure of this age has not been brought to our notice by learned counsel for the parties, except that the applicant's age was given by his counsel before the High Court at the stage of appeal hearing. Next is the age reflected in the electoral roll and if one goes by that, then his age at the time of commission of offence would be 19 years. The electoral roll was referred to in the police report dated 2nd March 2019 but does not appear to have been considered by the Inquiring Judge. The third source of his age is the family card, in which it is mentioned that he was 12 years in 1989 or 1991/1992 . That would have taken his year of birth to 1977-79, and that would make him 15 to 17 years of age at the time of commission of offence. For the reasons we have already explained, we have discarded the latter document. Now which document or source is to be accepted by us? In the case of **Pawan** (supra), a Coordinate Bench of this Court has rejected the juvenility plea when documents to raise the plea of juvenility were collected after conviction. In that judgment, this Court cited the case of **Murari Thakur** (supra) and the Coordinate Bench observed:-

"41. The question is: should an enquiry be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court. Where the materials placed before this Court by the accused, prima facie, suggest that the accused was "juvenile" as defined in the 2000 Act on the date of incident, it may be necessary to call for the report or an enquiry be ordered to be made. However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, we do not think any further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the Court must be satisfied by placing adequate and satisfactory material that the accused had not attained the age of eighteen years on the date of commission of offence; sans such material any further enquiry into juvenility would be unnecessary.
42. As regards A-2, two documents are relied upon to show that he had not attained the age of eighteen years on 25-9-2003/269 -2003. His age (17 years) mentioned by the trial court at the time of recording his statement under Section 313 CrPC is a tentative observation based on physical appearance which is hardly determinative of age. The other document is the school leaving certificate issued by the Headmaster, Prem Shiksha Niketan, Bilaspur, Rampur which does not inspire any confidence as it seems to have been issued on 16-10-2006 after A-2 had already been convicted. Primary evidence like entry from the birth register has not been produced. We find it difficult to accept Annexure P-3 (school leaving certificate) relied upon by the counsel. For A-1, the only document placed on record is a school leaving certificate which has been procured after his conviction. In his case also, entry from the birth register has not been produced. We are not impressed or satisfied with such material. There being no satisfactory and adequate material, prima facie, we are not persuaded to call for report about the age of A-1 and A-2 on the date of commission of offence."

36. So far as the case of the applicant is concerned, on the basis of materials disclosed in the present application, an inquiry was directed in the order passed on 29th January 2019. In the case of **Pawan** (supra) school leaving certificate issued by the headmaster of a school did not inspire the confidence of the Court. Here however, we have called for the original admission register itself, on the basis of which certificate of birth was issued. The latter is a document specified under Section 94 (2)(a)(i) of the 2015 Act. In the order of sequence the age proof is required to be proved as per the aforesaid provision, the date of birth certificate is the first document to be examined for determination of age. Thus, factually the ratio of the said judgment can be

distinguished. In the case of **Pawan Kumar Gupta** (supra), the juvenility claim was raised for the second time and for this reason it was held that the same plea was not maintainable. A Coordinate Bench in the case of **Mohd. Anwar** (supra) has observed that belated claims not only prevent proper production and application of the evidence but also undermine the genuineness of the defence. But this authority does not lay down, as an absolute proposition of law, that belated production of age proof cannot be examined to determine juvenility of an accused. Furthermore, Section 9 (2) of the 2015 Act specifically stipulates that such plea can be raised "at any stage". The ratio of the case of **Surajdeo Mahto** (supra) would also not apply in the facts of this case as in this proceeding the Inquiring Judge has gone into the question as to whether the certificates relied upon by the applicant belonged to him or not and has returned a finding that Niranaram was indeed Narayan. We have also tested this finding and sustain the view of the Inquiring Judge.

37. In the cases of **Ramdeo Chauhan** (supra), **Sanjeev Kumar Gupta -vs- State of Uttar Pradesh and Another** [(2019) 12 SCC 370], **Parag Bhati** (supra), **Manoj** (supra), **Babloo Pasi -vs- State of Jharkhand and Another** [(2008) 13 SCC 133] and **Birad Mal Singhvi** (supra), different Benches of this Court came to findings as regards reliability of the documents upon applying mind and none of these authorities lay down that the certificate of date of birth by the school authorities based on admission register of the school will not be acceptable for an inquiry under Section 9(2) of the 2015 Act. On the other hand, in the order of priority in the aforesaid provision, the date of birth certificate by the school authority has been given the pre-eminence. Though the heading of the said section reads "presumption and determination of age", the section itself does not specify that the date of birth certificate by the school would only lead to presumption. The way the provision thereof has been framed, the documents referred to in the first two sub-clauses of sub-section (2) of Section 94 of the 2015 Act, if established in the order of priority, then the dates reflected therein has to be accepted to determine the age of the accused or convict claiming to be a juvenile on the date of commission of the offence. In the event the document referred to in Section 94 (2)(i) is there, the inquiring body need not go to the documents referred to in sub-clause (ii) thereof. The only caveat, implicit thereto, which has been sounded by several decisions of this Court, is that the document must inspire confidence. But lack of inspiration of the age-determining authority must come for some cogent reason and ought not to be sourced from such body's own perception of age of the juvenile-claimant.

38. A Constitution Bench in the case of **Pratap Singh -vs- State of Jharkhand and Another** [(2005) 3 SCC 551] dealing with the meaning of juvenile under the 1986 Act and the 2000 Act, held:-

"12. Clause (l) of Section 2 of the 2000 Act defines "juvenile in conflict with law" as meaning a juvenile who is alleged to have committed an offence. The notable distinction between the definitions of the 1986 Act and the 2000 Act is that in the 1986 Act "juvenile in conflict with law" is absent. The definition of delinquent juvenile in the 1986 Act as noticed above is referable to an offence said to have been committed by him. It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority and/or court he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have committed. In our view, therefore, what was implicit in the 1986 Act has been made explicit in the 2000 Act."

39. In a later decision, in the case of **Jitendra Singh alias Babboo Singh and Another -vs- State of Uttar Pradesh** [(2013) 11 SCC 193], this Court's view was reflected in the following passage:-

*"**72**. The upshot of the above discussion is that while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the 2000 Act, no matter the later enactment was not on the statute book on the date of the occurrence. The difficulty arises when we examine whether the trial and the resultant order of conviction of the appellant would also deserve to be set aside as illegal and without jurisdiction. The conviction cannot however be set aside for more than one reason:*

***72.1.** Firstly, because there was and is no challenge to the order of conviction recorded by the courts below in this case either before the High Court or before us. As a matter of fact the plea of juvenility before this Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the court concerned had no jurisdiction to try the appellant.*

***72.2.** Secondly, because the fact situation in the case at hand is that on the date of the occurrence i.e. on 245 -1988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the 1986 Act that covered the field at that point of time, nor did the 1986 Act deprive the trial court of its jurisdiction to try the appellant for the offence he was charged with. The repeal of the 1986 Act by the 2000 Act raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional court by enacting Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which is to the following effect:*

*"**20 .Special provision in respect of pending cases**.—Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:*

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

In **Dharambir -vs- State (NCT of Delhi) and Another** [(2010) 5 SCC 344] and **Mahesh Jogi -vs- State of Rajashthan** [(2014) 15 SCC 184], similar view has been taken by this Court. In **Satya Deo alias Bhoorey -vs- State of Uttar Pradesh** [(2020) 10 SCC 555], it was observed by a two-Judge Bench of this Court that in light of Section 6 of the General Clauses Act, 1897 read with Section 25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than 18 years of age at the time of commission of offence. The reasoning of the Court was that such right stood acquired and fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 1st April 2001.

40. So far as the applicant is concerned, his claim of juvenility based on his date of birth in the school certificate would not vary based on definitions of juvenile, "juvenile in conflict with law" or "child in conflict with law" under the 1986 Act, 2000 Act or the 2015 Act. For applying the procedure for determining his claim, of juvenility or of being a child, in our opinion, the law applicable at the time of undertaking that exercise by the concerned statutory body would prevail. Hence, in his case, we have tested his claim on the basis of the provisions of Section 9 read with Section 94 of the 2015 Act.

41. Under the 2015 Act the date of birth certificate ought to be the main factor for determination of juvenility. In the case of **Rishipal Singh Solanki** (supra), the two-Judge Bench of this Court has laid down the principle that an inquiry initiated under Section 9 (2) of 2015 Act would be similar to that contained in Section 94 of thereof. We accept this view. We have called for the source of the date of birth

certificate, which recorded the applicant's birth date at the time of his entry into the school which was in the year 1986. So far as the inconsistent dates of birth mentioned in the other documents, none of them is specified to be taken into consideration for undertaking the process of age determination as laid down in Section 94 (2) of the said statute. Once the applicant has discharged his onus, in support of his claim of juvenility by producing the date of birth certificate from the school, the State had to come up with any compelling contradictory evidence to show that the recordal of his date of birth in the admission register was false. The State, in this case, has not come up with any such compelling evidence which would render such certificate to be unreliable or false. The State and the complainant have sought to disprove the applicant's case on the basis of materials disclosed by him only, apart from the electoral roll. Here, we cannot indulge in any guesswork to doubt the entry in the school register. No evidence has been led to contradict the basis of the age of the applicant reflected in the aforesaid document. The certificate of date of birth as evidence of age having been provided in the statute itself, we shall go by that. The other factor which has crossed our mind is as to whether a boy of 12 years could commit such a gruesome crime. But though this factor shocks us, we cannot apply speculation of this nature to cloud our adjudication process. We possess no knowledge of child psychology or criminology to take into account this factor while examining the report of the Inquiring Judge. Moreover, the age of the applicant revealed in the ossification test keeps the age of the applicant as claimed by him, within the range specified in the report. The said test was conducted in the year 2005, and his age was determined in the range of 22 to 40 years. If we take 22 years as his age in 2005, then his year of birth would haven been 1983. That would broadly correspond to the date of birth contained in the admission register.

42. In the case of **Rishipal Singh Solanki** (supra), it has been laid down that if two views are possible on the same evidence the Court should lean in favour of holding the accused to be a juvenile in borderline cases. In the case of State of Jammu & Kashmir (Now **U.T. of Jammu and Kashmir) and Others -vs- Shubham Sangra** [2022 SCC OnLine SC 1592], the decision of **Parag Bhati** (supra) was followed, which laid down that benefits of the 2000 Act ought to be extended to only such cases wherein the accused is held to be a juvenile on the basis of clear and unambiguous case that the accused was minor on the date of the incident and the documentary evidence at least prima facie inspires confidence regarding his minority. It was opined in this judgment that when an accused commits a grave and heinous offence, his plea of juvenility cannot be allowed to come to his rescue and Court cannot take a casual or cavalier approach in determining his minority. A somewhat different view has been expressed in the case of **Rishipal Singh Solanki** (supra), which we have referred to above. A view similar to that taken in **Rishipal Singh Solanki** (supra) was reflected in the decision of a two-Judge Bench of this Court in the case of **Rajinder Chandra -vs- State of Chhattisgarh and Another** [(2002) 2 SCC 287]. In our opinion however, in the event the Court, Board or the Committee is satisfied that the claimant on the date of offence was a juvenile, the dimension of gravity of the offence cannot be considered by the Court to reject the benefit granted to an accused or convict under the 2015 Act. We agree with the observations made in the cases of **Shubham Sangra** (supra) and **Parag Bhati** (supra) that a casual or cavalier approach should not be taken in determining the age of the accused or convict on his plea of juvenility, but a decision against determination of juvenility ought not to be taken solely for the reason that offence involved is heinous or grave. The degree or dimension of the offence

ought not to direct approach of the Court in its inquiry into juvenility of an accused (in this case a convict). The exception where a different view can be taken has been provided by the legislature itself in Section 15 of the 2015 Act and if on the basis of commission of heinous crime, a juvenile is required to be denied the benefit of the 2015 Act, the course specified therein would be required to followed.

43. In the light of our findings and the reasons we have disclosed above for arriving at such finding, we accept the report of the Inquiring Judge. We declare that the date of birth of the applicant as reflected in the certificate issued by the Rajkiya Adarsh Uccha Madhaymik Vidyalaya, Jalabsar, tehsil - Shri Dungargarh, district – Bikaner, dated 30th January 2019, a copy of which has been annexed in the Inquiry Report as "I-2", is to be accepted for determining his age at the time of commission of the offence of which he has been convicted. Going by that certificate, his age at the time of commission of offence was 12 years and 6 months. Thus, he was a child/juvenile on the date of commission of offence for which he has been convicted, in terms of the provisions of the 2015 Act. This shall be deemed to be the true age of Niranaram, who was tried and convicted as Narayan. He has already served more than 3 years of incarceration and under the law as it prevailed at the time of commission of offence as also under the 2015 Act, he cannot be subjected to capital punishment. In view of this finding, the order sentencing him to death passed by the Additional Sessions Judge, Pune in Sessions Case No. 462 of 1994 and subsequently confirmed by the High Court and by this Court would stand invalidated by operation of law. He shall be set free forthwith from the correctional home in which he remains imprisoned, as he has suffered imprisonment for more than 28 years, having regard to the provisions of Section 18 of the 2015 Act. Section 21 of the 1986 Act also carried substantially the same provision on the question of maximum punishment that can be awarded to a delinquent juvenile by the Juvenile Court. The restriction on term of detention that can be awarded by the Board under the 2015 Act to a child below 16 years would also apply to the Court before which the juvenility question is being determined.

44. I.A. No. 5242 of 2016 as also I.A. No. 5245 of 2016 are applications taken out by the applicant for reopening the review petition. We are of the view, however, that an application under Section 9(2) of the 2015 Act is an independent proceeding and we have decided the same without revisiting the review order. Crl. M.P. No. 155609 of 2019 has been filed by the intervenor raising objection to the inquiry report. We dispose of the same as we have considered the content of this petition. All other applications shall stand disposed of.

45. The present application stands allowed in the above terms.