

Cr. Appeal No.174 of 2019 Date of Decision:31.12.2024.Coram: Hon'ble Mr. Justice Vivek Singh Thakur, JudgeHon'ble Mr. Justice Rakesh Kainthla, Judge

Ranveer Singh ...Appellant V/s State of H.P.Respondent

(A) Indian Penal Code, 1860 Section 363, 376–Protection of Children fromSexual Offences (POCSO) Act, 2012–Section 6–Kidnapping and rape–Promise to marriage–Aggravated penetrative sexual assault–Determination of age of victim–The appellant, was convicted by theTrial Court for kidnapping and raping a minor–The conviction wasbased on the victim's testimony, medical evidence, and the recoveryof the victim by the police–Appeal against conviction–Held–The TrialCourt has committed an error in placing reliance on Panchayatrecord for proving the age of victim when the school certificate ofbirth was available–The evidence available on record does notestablish that the victim was minor–Once it is held that the victimwas not proved to be minor, the victim's consent assumessignificance–Her conduct falsifies her statement that she wasforcibly taken out of the house of Leela Devi and was raped by the

accused–Even Medical evidence falsifies the story of prosecutrix–Accused is entitled for the benefit of doubt–Impugned order of

conviction is set aside–Appeal allowed. (Paras 23, 24 and 25)(B) Registration of Births and Deaths Act, 1969 Section 17–JuvenileJustice (Care and Protection of Children) Act, 2015–Section 94–Juvenile Justice Rules, 2007 Rule 12–Determination of age of victim–Held–As per Rule 12(3)(a)(ii) of Juvenile Justice, Rule 2007 andSection 94 of the Juvenile Justice Act, 2015, the certificate from theschool which was first attended by the victim has to be preferred tothe birth certificate which falls within Rule 12 (iii)(a) of the JuvenileJustice Rule, 2007–Rule 12 (3)(a) provides that a matriculationcertificate, if available, in its absence date of Birth certificate from theschool first attended and in their absence the birth certificate givenby the Corporation Municipal Authority or Panchayat would beconsidered–These are in hierarchal order–Thus, where amatriculation certificate is available, the birth certificate from theschool and the birth certificate given by the Corporation cannot berelied upon–The birth certificate from the school attended by thevictim was available in the present case hence, the birth certificatefrom the school is to be preferred to the birth certificate issued fromthe Panchayat. (Para 19)2025 Ranveer Singh V/s State of H.P. 1

Cases referred:1. Alamelu vs. State, (2011) 2 SCC 385, (2011), 1 SCC (Cri) 688,2. State of Chhattisgarh vs. Lekhram, (2006) 5 SCC 736.3. Murugan vs. State of T.N., (2011) 6 SCC 111.4. Jarnail Singh vs. State of Haryana (2013) 7 SCC 263.5. Sanjeev Kumar Gupta vs. State of U.P.& Ors (2019) 12 SCC 370.6. Rishipal Singh Solanki vs. State of U.P., (2022) 8 SCC 602.7. Vinod Katara vs. State of U.P., 2022 SCC OnLine SC 1204.8. P. Yuvaprakash vs. State, 2023 SCC OnLine SC 846.9. Satpal Singh vs. State of Haryana (2010), 8 SCC 2014.

Parties represented by:For the Appellant: Mr. Manoj Pathak, Advocate.For the Respondents: Ms. Seema Sharma, Deputy Advocate General.Rakesh Kainthla, Judge:- The present appeal is directed against the judgment and order dated 03.04.2019 vide which the appellant (accused before learned Trial Court) was convicted of the commission of offences punishable under

Sections 363 and 376 of the Indian Penal Code (in short, IPC) and Section 6 of Protection of Children from Sexual Offences Act (in short POCSO Act) and was sentenced as under: Under Section 363 IPC

To suffer rigorous imprisonment for 5 years, pay fine of ? 5000/- and in default of payment of fine to undergo further simple imprisonment for six months.

Under Section 6 POCSO

To suffer rigorous imprisonment for 10 years, pay a fine of ? 10,000/- and in default of payment of fine to undergo further simple imprisonment for one year. Both the substantive sentences of imprisonment were ordered to run concurrently. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the victim (the name being withheld to protect her identity) was born on 15.11.2001. She went to her sister's house on 16.02.2016 but did not return. Her father searched for her and found that the accused had kidnapped her with the intent to marry her. The matter was reported to the police through an application (Ext.PW3/A). FIR (Ext.PW12/A) was registered in the Police Station. ASI Mehar Chand (PW12) conducted the investigation. The accused produced the victim in the Police Station on 20.02.2016. The victim's sister identified her. ASI Mehar Chand (PW12) handed over the custody of the victim to her sister vide memo (Ext.PW4/A). The statement of the victim was reduced into writing and video recorded with the help of LC Prem Lata (PW5). The video recording was transferred to the CD (Ext.C1). ASI Mehar Chand (PW12) filed an application (Ext.PW12/B) for the victim's medical examination. Dr. Yashoda Anand (PW1) conducted the medical examination of the victim. She preserved the samples and underwear of the victim. In her opinion, the possibility of recent sexual intercourse could not be ruled out. She issued the MLC (Ext.PW1/A) and handed over the articles preserved by her to LC Prem Lata after sealing them. ASI Mehar Chand

(PW12) arrested the accused. He filed an application (Ext.PW8/A) for the medical examination of the accused. Dr. Abhilash Seregta (PW8) conducted the medical examination of the accused and found that there was nothing to suggest that the accused was incapable of performing sexual intercourse. He preserved the samples and obtained the blood of the accused on an FTA card. He issued the MLC (Ext.PW8/B) and handed over the samples preserved by him to the police official accompanying the accused. The accused pointed out the place from where he had kidnapped the victim. Memo (Ext.PW12/C) and site plan (Ext.PW12/D) were prepared. The victim led ASI Mehar Chand (PW12) to the room where she was kept and subjected to sexual intercourse by the accused. ASI Mehar Chand (PW12) seized the bed sheet (Ext.P4) lying on the bed. He put it in a parcel and sealed the parcel with three impressions of seal 'M'. He obtained the specimen seal impression (Ext.PW12/E) on a separate piece of cloth and seized the parcel vide memo (Ext.PW4/B). The accused took the police to the house of his sister and pointed out the room where he had stayed with the victim. ASI Mehar Chand (PW12) prepared the memo (Ext.PW12/G) and the site plan (Ext.PW12/H). He found the salwar (Ext.P2) and shirt (Ext.P3) of the victim, which were left behind by her. These articles were put in a parcel, the parcel was sealed with seal 'M', and seized vide memo (Ext.PW4/C). The seal was handed over to the victim's sister after the use. Balwant Singh (PW6) produced the birth certificate

(Ext.PW6/B) and photocopy of the birth register (Ext.PW6/C), which were seized by the police. The case property was deposited with HC Kartar Singh (PW9), who deposited them in Malkhana and made an entry (Ext.PW9/A) in the Malkhana register. He handed over all the articles except the FTA card to HHC Puran Chand (PW7) with the direction to carry them to RFSL Mandi, vide R.C. No. 19 of 2016 (Ext.PW9/B). HHC Puran Chand deposited all the articles in a safe condition at RFSL Mandi and handed over the receipt to MHC on his return. The result of analysis (Ext. PX) was issued in which it was shown that the blood was detected on the underwear, vaginal swab, vaginal slide, pubic hair, shirt and salwar of the victim. Human semen was detected on the slacks, underwear and genital swab of the accused. The statements of the remaining witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Special Judge.

3. The learned Special Judge charged the accused with the commission of offences punishable under Sections 363 and 376 of IPC and Section 6 of the POCSO Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 12 witnesses to prove its case. Dr. Yashoda Anand (PW1) conducted the medical examination of the victim. Victim (PW2) narrated the incident. (PW3) is the father of the victim who had reported the matter to the police. (PW4) is the sister of the victim who witnessed various recoveries. LC Prem Lata (PW5) recorded the statement of the victim and accompanied her to the hospital for her medical examination. Balwant Singh (PW6) produced the birth certificate of the victim. HHC Puran Chand (PW7) accompanied the accused for his medical examination and brought the sample; he also carried the case property to RFSL, Mandi. Dr. Abhilash Seregta (PW8) conducted the medical examination of the accused. HC Kartar Singh (PW9) was working as MHC, with whom the case property was deposited. Pradeep Kumar (PW10) transferred the video recording to 2025 Ranveer Singh V/s State of H.P. 3

the CD. HC Vikram Singh (PW11) is the witness to the recovery. ASI Mehar Chand (PW12) conducted the investigation.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution case in its entirety. He claimed that he was innocent and falsely implicated.

6. The learned Trial Court held that the victim was proved to be a minor on the date of the incident. She admitted that her parents used to harass her, and she went to the house of the accused herself, but that is not material. The victim was a minor and incapable of giving consent. She was removed from the custody of her parents without their consent. Hence, the offences punishable under Sections 363 and 376 of IPC and Section 6 of the POCSO Act were established against the accused. Consequently, the accused was convicted and sentenced as aforesaid. 7. Being aggrieved from the judgment and order passed by the learned

Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in convicting and sentencing the accused. The judgment is based on the conjecture and surmises. The prosecution evidence was partisan and conflicting. The learned Trial Court brushed aside material contradictions and improvements in the testimonies of the prosecution witnesses. The prosecution miserably failed to prove that the victim was less than 18 years of age on 20.02.2016. Therefore, it was prayed that the present appeal be allowed and

the judgment and order passed by the learned Trial Court be set aside.

8. We have heard Mr. Manoj Pathak, learned counsel for the appellant/accused, and Ms. Seema Sharma, learned Deputy Advocate General for the respondent/State.

9. Mr. Manoj Pathak, learned counsel for the petitioner/accused, submitted that the learned Trial Court erred in convicting and sentencing the accused. The prosecution has not succeeded in establishing the victim's age. The victim's father stated that the age gap between his son and the victim was 10 years. The age of the son was 12 years. Therefore, the victim was proved to be 22 years of age. The victim was studying at the school, and the birth certificate from the school was not obtained. There is a reasonable doubt regarding the victim's age, and the prosecution had failed to prove that the victim was a minor on the date of the incident. The learned Trial Court erred in holding that the victim was a minor; hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Ms. Seema Sharma, learned Deputy Advocate General for the respondent/State, supported the judgment and order passed by the learned Trial Court. She submitted that the age of the victim was duly proved by her birth certificate, and her father categorically stated that he had got the victim's date of birth entered in the birth register, which shows the authenticity of the entry made in the birth register. Learned Trial Court had rightly held that the victim was a minor; hence, she prayed that the present appeal be dismissed.

11. We have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The victim (PW2) stated that she knew the accused. The accused took her to his house on the 20th of 2016 when she had gone to the house of Leela Devi. The accused promised to marry her. He kept her in his house for two days. He took her to his sister's house on the third day. The accused forcibly maintained bodily relations with her during the aforesaid period. Thereafter, both of them went to the Police Station, Nirmand, because her parents had reported the matter to the police. She stated in her cross-examination that the accused had taken her to the Police Station. Her parents used to harass her, and on that account, she had gone to the house of the accused. She had taken a meal in the house and gone out to attend the call of nature. She had told the parents and son of the accused that the accused had forcibly subjected her to sexual intercourse. She had gone on a busto Jhakri. She used to talk to the accused before the incident. Her five sisters were older than her, but she was not aware of the date of their birth or their age. Her brother was the youngest and was born in the year 2003. He was twelve years younger than her. She denied that she was aged more than 18 years in the year 2016.

12. The cross-examination of the victim shows that she had voluntarily gone to the house of the accused because she was harassed by her parents. She remained in the house of the accused with his family members and voluntarily accompanied him to his sister's house. It is not shown that she had ever made any complaint regarding her kidnapping to any person or made any attempt to escape. The victim's conduct belies her version that she was forcibly taken by the accused.

13. The learned Trial Court held that the victim was a minor on the date of the incident, and her consent was immaterial. Learned Trial Court relied upon the certificate issued by Balwant Singh (PW6) to arrive at such a conclusion.

14. It was submitted that the birth register is maintained by a public official in the discharge of his official duty under Section 17 of the Registration of Births and Deaths Act, 1969 and is per se admissible under Section 35 of the Indian Evidence Act (corresponding to Section 29 of Bharatiya Sakshya Adhinyam). There is a presumption of correctness of the official acts under Section 114 of illustration (e) of the Indian Evidence Act (corresponding to Section 119 of Bharatiya Sakshya Adhinyam), the birth certificate is used to enter the age of the child while admitting him to the school and is the primary evidence of the date of birth of the child. The Courts have consistently held that the entries made in the birth certificate are per se admissible, and the learned Trial Court had rightly relied upon the victim's birth certificate. Reliance was placed upon the judgments of the Hon'ble Supreme Court in *Alamelu v. State*, (2011) 2 SCC 385 : (2011) 1 SCC (Cri) 688, *State of Chhattisgarh v. Lekhram*, (2006) 5 SCC 736, and *Murugan v. State of T.N.*, (2011) 6 SCC 111 in support of this submission. It is not permissible for this Court to accept this submission because the matter is concluded by the binding precedent of the Hon'ble Supreme Court. It was laid down by the Hon'ble Supreme Court in *Jarnail Singh versus State of Haryana* (2013) 7 SCC 263 that the provisions of the Juvenile Justice Act (JJ Act) should be followed to determine the age of the victim under the POCSO Act. It was observed: 2025 Ranveer Singh V/s State of H.P. 5

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with the law, we are of the view that the aforesaid statutory provision should be the basis for determining the age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of the minority is concerned between a child in conflict with law and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has an overriding effect over an option expressed in a subsequent clause. The highest-rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), the matriculation (or equivalent) certificate of the child concerned is the highest-rated option. In case the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation, a municipal authority, or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid that Rule 12(3) postulates the determination of the age of the child concerned on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the

prosecutrix VW, PW 6, could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to Class 3 only, and thereafter, had left school and had started to do household work. The prosecution, in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW, PW 6, on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6, had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records indicating that the prosecutrix VW, PW 6 was born on 15-5-1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are, therefore, of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under

the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material, including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4, has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly, it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence, i.e. on 25-3-1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW, PW 6, was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court that even if the prosecutrix VW, PW 6, had accompanied the appellant-accused Jarnail Singh of her own free will and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”
(Emphasis supplied)

15. Thus, the provisions of Rule 12 have to be applied to determine the age of the victim.

16. It was held in *Sanjeev Kumar Gupta versus State of U.P. & Ors* (2019) 12 SCC 370 that Rule 12 (3)(a) provides that a matriculation certificate, if available, in its absence date of Birth certificate from the school first attended and in their absence the birth certificate given by the Corporation Municipal Authority or Panchayat would be considered. These are in hierarchical order. Thus, where a matriculation certificate is available, the birth certificate from the school and the birth certificate given by the Corporation cannot be relied upon. It was observed: “12. Clause (a) of Rule 12(3) provides that for the purpose of seeking evidence in the enquiry, the following documents would have to be obtained:

(i) matriculation or equivalent certificate if available;

(ii) in the absence of (i) the date of birth certificate from the school first attended; and

(iii) in the absence of (i) and (ii) the birth certificate given by a corporation, municipal authority or panchayat.

Clause (a) of Rule 12(3) contains a hierarchical ordering, evident from the use of the language “in the absence whereof”. This indicates that where a matriculation or equivalent certificate is

available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained. This facet of Rule 12(3) was noticed in the two-judge Bench decision of this Court in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750: (2013) 1 SCC (Cri) 594].

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13. K.S.P. Radhakrishnan, J. while holding that the procedures laid down in CrPC cannot be imported while making an enquiry in regard to a claim of juvenility under the 2007 Rules observed: (Ashwani Kumar Saxena case [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594], SCC pp. 763-64, para 32) “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 need 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 a medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case an 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 the lower side within the margin of one year.”

The Court took notice of the fact that there could be situations in which the date of birth recorded in the matriculation certificate, or for that matter in the other certificates referred to in Rule 12(3)(a), may not be correct. The Court held that where it was only when those documents are found to be fabricated or manipulated, could the date of birth as reflected be discarded. The Court held : (Ashwani Kumar Saxena case [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594], SCC p. 764, para 34)

“34. ... 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 the 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.”

In the view of the Court, it was only if the above conditions were fulfilled that a medical report could be called.

14. The decision in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9

SCC 750: (2013) 1 SCC (Cri) 594] was rendered on 13-9-2012. Soon thereafter, a three judge Bench of this Court considered the provisions of Section 7-A and Rule 12 in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489: (2013) 1 SCC (Cri) 83]. R.M. Lodha, J. (as the learned Chief Justice then was), speaking for himself and Anil R. Dave, J. observed: (Abuzar Hossain case [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489: (2013) 1 SCC (Cri) 83], SCC pp. 509-10, para 39)

“39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued, nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents, like the school-leaving certificate or the voters' list, etc., obtained after conviction would depend on the facts and circumstances of each case, and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [Akbar Sheikh v. State of W.B., (2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [Pawan v. State of Uttaranchal, (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [Jitendra Singh v. State of U.P., (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school-leaving certificate, mark sheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.”¹⁵. The above decision in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] was rendered on 10-10-2012. Though the earlier decision in Ashwani Kumar Saxena [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594] was not cited before the Court, it appears from the above extract that the three-Judge Bench observed that the credibility and acceptability of the documents, including the school leaving certificate,

would depend on the facts and circumstances of each case, and no hard-and-fast rule as such could be laid down. Concurring with the judgment of

R.M. Lodha, J., T.S. Thakur, J. (as the learned Chief Justice then was) observed that directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former, the court simply records a prima facie conclusion, while in the latter, a declaration is made on the basis of evidence. Hence, the approach at the stage of directing the inquiry has to be more liberal (Abuzar Hossain case [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489: (2013) 1 SCC (Cri) 83], SCC pp. 513-14, para 48)

W.B., (2012) 10 SCC 489: (2013) 1 SCC (Cri) 83], SCC pp. 513-14, para 48)

“48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority, which would satisfy the court's conscience before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a

declaration on evidence that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest there is an avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing better affidavits if the need so arises, and even direct any additional information considered relevant, including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case-to-case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry.”

16. Both these judgments have since been considered by a two-judge Bench of this Court in Parag Bhati [Parag Bhati v. State of U.P., (2016) 12 SCC 744 : (2017) 3 SCC (Cri) 819], where it was observed : (SCC p.758, para 36)

“36. It is a settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of the date of birth, the date of birth mentioned in the matriculation certificate has to be treated as conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand being taken by the accused which raises doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83], an enquiry for determination of the age of the accused is permissible which has been done in the present case.”

17. The 2015 Act came into force on 15-1-2016. Section 111 repeals the earlier 2000 Act but stipulates that despite the repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of the new legislation. Section 94 contains provisions in regard to the determination of age, in the following terms:

“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 Examination Board concerned, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation, 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." Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the Examination Board concerned in the same category [namely (i) above]. In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a)(i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

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17. It was held in *Rishipal Singh Solanki v. State of U.P.*, (2022) 8 SCC 602 that Section 94 of the Juvenile Justice Act, 2015, incorporated the provision of Rule 12 of Juvenile Justice Rules, 2007. The documents mentioned in Rule 12(3)(a) i, ii, iii, of Juvenile Justice Rules, 2007 or Section 94(2) of Juvenile Justice Act will be prima facie sufficient to prove the age. It was held in *Vinod Katarav versus State of U.P.*, 2022 SCC OnLine SC 1204 that clause (a) of Rule 12(3) of 2007 Rules contains a hierarchical order. It was observed: 48. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language "in the absence whereof". This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained.

49. In *Shah Nawaz v. State of Uttar Pradesh* (2011) 13 SCC 751, this Court, while examining the scope of Rule 12 of the 2007 Rules, had reiterated that medical opinion from the Medical Board should be sought only when the matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended, or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available. This Court had held that the entry related to the date of birth entered in the mark sheet is valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.

18. A similar view was taken in *P. Yuvaprakash v. State*, 2023 SCC OnLine SC 846, wherein it was observed that:

11. Before discussing the merits of the contentions and evidence in this case, it is necessary to

extract Section 34 of the POCSO Act, which reads as follows:

“34. Procedure in case of commission of offence by child and determination of age by Special Court. - (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person, and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person

as determined by it under sub-section (2) was not the correct age of that person.”

12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act 2015 becomes relevant and applicable. That provision is extracted below: “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, 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.”

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(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, 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”.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate, matriculation or equivalent certificate was considered. Ex.C1, i.e., the school transfer certificate, showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court-summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW3, the concerned Revenue Official (Deputy Tahsildar), had stated on oath that the records for the year 1997 with respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of the commission of the offence. 15. In a recent decision, in *Rishipal Singh Solanki v. State of Uttar Pradesh* (2021) 12 SCR 502, this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is *in pari materia*) with Section 94 of the JJ Act and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in the determination of age. The juvenility of a person in conflict with the law had to be decided *prima facie* on the basis of physical appearance or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate

given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, the benefit could be given to the child or juvenile by considering the age on the lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in *Sanjeev Kumar Gupta v. The State of Uttar Pradesh* (2019) 9 SCR 735 that: "Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain v. State of West Bengal* (2012) 9 SCR 224, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

19. Therefore, as per Rule 12(3)(a)(ii) of Juvenile Justice, Rule 2007 and Section 94 of the Juvenile Justice Act, 2015, the certificate from the school which was first attended by the victim has to be preferred to the birth certificate which falls within Rule 12 (iii)(a) of the Juvenile Justice Rule, 2007.

20. In the present case, the victim stated in her *voir dire* that she had studied up to the 9th class. She had initially studied in Government Primary School and thereafter in Government High School. This shows that the birth certificate from the school attended by the victim is available in the present case; hence, the birth certificate from the school is to be preferred to the birth certificate issued from the Panchayat as per the judgments of the Hon'ble Supreme Court. Learned Trial Court failed to notice this aspect and erred in holding that the victim was a minor based on the certificate of the date of birth. 2025 Ranveer Singh V/s State of H.P. 15

21. Even otherwise, the oral evidence to show the date of birth of the victim does not corroborate the entries made in the certificates (Ext.PW6/B and Ext.PW6/C). The victim's father (PW3) stated that the age gap between his son and the victim was 10 years. The age of the son was 12 years, which shows that the age of the victim, as per him, would be about 22 years. The victim stated that five sisters were older than her. The entry in the birth register (Ext.PW6/C) shows that the victim was a seventh child. The victim's sister said that the victim was about 15-18 years younger than her, and her brother was 20-21 years younger than her, who was born in the year 2006. Thus, as per the victim's sister, the gap between the victim and her brother is about 3-5 years. The victim stated that her brother was born somewhere in the year 2003 and was probably 12 years younger than her. All these statements make it difficult to place a reliance on the birth certificate.

22. It was laid down by the Hon'ble Supreme Court in *Satpal Singh vs State of Haryana* (2010), 8 SCC 2014, that the document may be admissible in evidence. However, its probative value has to be examined in the facts and circumstances of the case. It was observed:

“22. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in Ram Prasad Sharma vs State of Bihar AIR 1970 SC 326; Ram Murti vs State of Haryana AIR 1970 SC 1029; Dayaram & Ors. Vs. Dawalatshah & Anr. AIR 1971 SC 681; Harpal Singh & Anr. Vs. State of Himachal Pradesh AIR 1981 SC 361; Ravinder Singh Gorkhi Vs. State of U.P. (2006) 5 SCC 584; Babloo Pasi Vs. State of Jharkhand & Anr. (2008) 13 SCC 133; Desh Raj Vs. Bodh Raj AIR 2008 SC 632; and Ram Suresh Singh Vs. Prabhat Singh @ Chhotu Singh & Anr. (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases. Such entries may be in any public document, i.e. school register, voter list, or family register prepared under the Rules and Regulations, etc., in force, and may be admissible under Section 35 of the Evidence Act as held in Mohd. Ikram Hussain Vs. The State of U.P. & Ors. AIR 1964 SC 1625; and Santanu Mitra Vs. State of West Bengal AIR 1999 SC 1587.....26. In Vishnu Vs. State of Maharashtra (2006) 1 SCC 283, while dealing with a similar issue, this Court observed that very often, parents furnish the incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable

persons and contemporaneous documents like the date of the birth register of the Municipal Corporation, Government Hospital/Nursing Home, etc., the entry in the school register is to be discarded.

27. Thus, the entry in respect of the age of the child seeking admission, made in the school register by a semi-literate chowkidar at the instance of a person who came along with the child having no personal knowledge of the correct date of birth, cannot be relied upon.

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in the performance of an official duty is admissible under Section 35 of the Evidence Act, but the party may still ask the Court/Authority to examine its probative value. The authenticity of the entry would depend on whose instruction/information such entry stood recorded and what was his source of information. Thus, an entry in the school register/certificate requires to be proved in accordance with the law. The standard of proof for the same remains as in any other civil and criminal case.

29. In case the issue is examined in the light of the aforesaid settled legal proposition, there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the School Register. It is not possible to ascertain who was the person who had given her date of birth as 13.02.1975 at the time of initial admission to the primary school. More so, it cannot be ascertained as to who was the person who had recorded her date of birth in the Primary School Register. More so, the entry in respect of the date of birth of the prosecutrix in the Primary School Register has not been produced and proved before the Trial Court. Thus, in view of the above, it cannot be held with certainty that the prosecutrix was a major. Be that as it may, the

issue of the majority becomes irrelevant if the prosecution successfully establishes that it was not a consent case.”

23. In the present case, the other evidence regarding the age of the victim does not establish the probative value of the entry in the birth register, and the learned Trial Court erred in holding that the birth register was sufficient to prove the date of birth of the victim.

24. Once it is held that the victim was not proved to be minor, the victim's consent assumes significance. Her conduct falsifies her statement that she was forcibly taken out of the house of Leela Devi and was raped by the accused. She had not made any complaint to any person. She had not protested when she was being taken in a Bus to the house of the sister of the accused. All these circumstances will make it difficult to place reliance on her testimony that she was forcibly taken away and raped by the accused.

25. The Medical Officer stated that the victim had undergone repeated sexual intercourse. The injury to the hymen suffered by her was not less than one week old and maybe months old. She examined the victim on 21.02.2016, five days after she was found missing from the house of Leela Devi. According to the Medical Officer, the injury was more than one week old, which shows that the

injury was caused much before 15.02.2016. This falsifies her statement that the accused had raped her after 16.02.2016.

26. All these circumstances create a reasonable doubt regarding the prosecution case, and the accused is entitled to the benefit of the same.

27. In view of the above, the present appeal is allowed, and judgment and order dated 03.04.2019 passed by the learned Trial Court are ordered to be set aside. The accused is ordered to be acquitted of the charged offences after giving him the benefit of the doubt. He be released forthwith, if not required in any other case.

28. The fine amount, if deposited, be refunded after the expiry of the period of limitation for filing the appeal in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the appellant/accused is directed to furnish his personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellant/accused, on receipt of notice(s) thereof, shall appear before the Hon'ble Supreme Court.

30. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.