

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1308 OF 2014

[Arising out of Special Leave Petition (Crl.) No.9412 of 2013]

Kulai Ibrahim @ Ibrahim

...

Appellant

Vs.

State Rep. by the Inspector of Police
B-1, Bazaar Police Station,
Coimbatore.

...

Respondent

ORDER

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.
2. In this special leave petition, judgment and order dated 15/10/2004 passed by the Madras High Court in Criminal Appeal No.963 of 2001 is under challenge.
3. The appellant along with others was tried by the II Additional Sessions Judge, Coimbatore for offences

punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code (**“the IPC”**). The Sessions Court convicted the appellant and 2 others for offence punishable under Section 148 of the IPC and sentenced them to suffer rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for one month each. The Sessions Court also convicted each of them for offence punishable under Section 302 of the IPC and sentenced each of them to imprisonment for life. The appellant along with the other 2 accused preferred an appeal to the High Court. By the impugned judgment and order, the High Court dismissed the said appeal. Being aggrieved by the dismissal of the appeal, the appellant has approached this Court.

3. In the petition, there is no challenge to the conviction and sentence on merits. The only point raised is that the appellant was a juvenile when the offence was committed and, hence, he cannot be convicted. However, in the interest of justice, we have carefully perused the impugned

judgment and the relevant record. We are of the considered opinion that the order of conviction and sentence is perfectly legal.

4. We must, therefore, look into the appellant's plea of juvenility. At the outset, we must mention that admittedly the plea of juvenility was not raised by the appellant in the trial court. It was for the first time raised in the High Court while the appeal was being argued. The High Court has noted in the impugned judgment that the plea of juvenility was neither raised before the trial court, nor raised in the memo of appeal before the High Court. The High Court noted that no application was filed before the High Court seeking permission to adduce evidence to establish that the appellant was a juvenile. The High Court, in the circumstances, rejected the plea.

5. The only question which now arises for consideration of this Court is whether the appellant was 'a juvenile' within the meaning of the term 'juvenile' as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000 ("**the J.J.**

Act, 2000") when the offence was committed and whether the plea of juvenility can be raised by him at this stage.

6. Section 7-A states the procedure to be followed when claim of juvenility is raised before any court. Proviso to Section 7-A states that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in the J.J. Act, 2000 and the rules made thereunder even if the juvenile has ceased to be so on or before the date of commencement of the J.J. Act, 2000. In this Court, therefore, the counsel for the appellant has renewed the plea of juvenility. The case of the appellant is that as on 2/9/1997, when the offence was committed, he was 17 years and 4 months' old. Section 2(k) of the J.J. Act, 2000 defines '*juvenile*' as a person who has not completed 18 years of age. Section 2(l) defines '*juvenile in conflict with law*' as a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence.

7. It is a settled position in law on a fair consideration of Section 2(k), 2(l), 7-A, 20 and 49 of the J.J. Act, 2000 read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (**“the said Rules”**) that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1/4/2001, which is the date of commencement of J.J. Act, 2000 could be treated as juveniles even if the claim of juvenility is raised after they have attained the age of 18 years on or before date of the commencement of the J.J. Act, 2000 which is 1/4/2001 and were undergoing sentences upon being convicted (See **Ketankumar Gopalbhai Tandel v. State of Gujarat**¹). Therefore, the claim of juvenility can be raised by the appellant.

8. Along with the criminal appeal, the appellant has filed an application praying that he may be permitted to urge additional grounds and bring on record additional documents. In the application, it is admitted that in the High

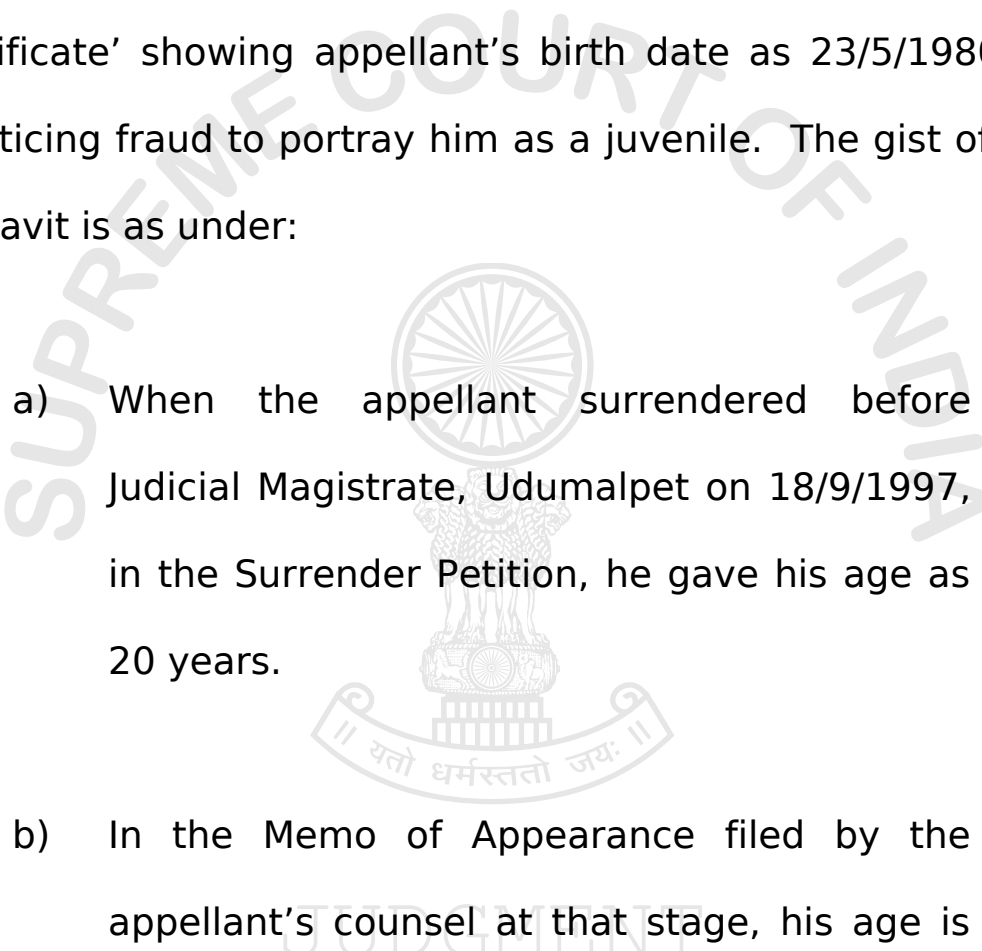
¹ JT 2013 (10) SC 554

Court without filing necessary documents, the plea of juvenility was raised and it was rejected by the High Court. It is further stated that the mother of the appellant died in the year 1997. After the death of his mother, his father had remarried and left the appellant and his brother alone. The appellant and his brother were living on their own. The appellant was tried for murder in the instant case. Since there was nobody to help the appellant, no steps were taken to bring the age of the appellant to the notice of the trial court as well as the High Court. It was only during the argument before the High Court that this plea was raised. Since the appellant was in jail, no steps were taken to obtain documents regarding his date of birth. It is further stated that during the year 2011, the appellant's father came back to him and enquired about the case in which the appellant is convicted. Then he took steps to obtain school certificate from the Good Shepherd Primary School, Fort, Coimbatore where the appellant had studied. It is further stated that the appellant's father was advised to obtain birth certificate from the Judicial Magistrate, Coimbatore as per the provisions of

Section 13(3) of the Birth and Death Registration Act, 1969. Accordingly, his father filed a petition under the said Act and the Judicial Magistrate, after making enquiry, verified the date of birth of the appellant. Vide order dated 1/2/2013, the Judicial Magistrate directed the Coimbatore City Municipal Corporation to register the birth of the appellant in the Birth Register as 23/5/1980. It appears that as directed by the Judicial Magistrate, the Coimbatore City Municipal Corporation has issued birth certificate to the appellant showing his date of birth as 23/5/1980. Thus, the appellant is relying on the school certificate issued by the Good Shepherd Primary School, Fort, Coimbatore and the birth certificate issued by the Coimbatore City Municipal Corporation. These documents on which the appellant has placed reliance are annexed to the affidavit and have thus come on record.

9. Counter affidavit has been filed on behalf of the respondent by R. Srinivasalu s/o. N. Ramachandran, presently working as Inspector of Police, B-12, Ukkadam Police Station, Coimbatore City, Tamil Nadu. In this affidavit,

it is stated that the appellant, with connivance of his father Mr. Abdul Razak, conspired and obtained fake record sheet and produced the same before the court and obtained 'Birth Certificate' showing appellant's birth date as 23/5/1980 by practicing fraud to portray him as a juvenile. The gist of the affidavit is as under:

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- a) When the appellant surrendered before Judicial Magistrate, Udumalpet on 18/9/1997, in the Surrender Petition, he gave his age as 20 years.
 - b) In the Memo of Appearance filed by the appellant's counsel at that stage, his age is mentioned as 20 years.
 - c) In the Form of Remand Warrant dated 18/9/1997 issued by learned Magistrate, the appellant's age is mentioned as 20 years as

per the Descriptive Roll. Form of Remand warrant is annexed to the affidavit.

- d) As required by the J.J. Act, 2000, the appellant has not produced the admission register of the school which he attended for the first time.
- e) The appellant has produced record sheet issued by Good Shepherd Primary School, Fort, Coimbatore dated 15/11/2011. The enquiry made by the respondent reveals that no record sheet was ever issued by the Head Master of the school and, hence, it is a forged document. The respondent has verified the school admission register maintained at Good Shepherd Primary School and found that no such student by name 'A. Ibrahim s/o. Abdul Razak' studied in that school, at all. The respondent had filed a requisition to the Head

Master to make enquiry and find out whether the record sheet filed by the appellant before this Court dated 15/11/2011 was issued by the Head Master of that school. The Head Master gave a written reply to the respondent that he had been working in the said school from 1/6/2010 onwards and that the said record sheet produced by the appellant was not issued by the school. The Head Master further stated that the certificate has been signed by one Jesudas as the Head Master on 15/11/2011, but no such person by name Jesudas was the Head Master of the school as on 15/11/2011. Jesudas had retired as Head Master as early as on 31/5/2010.

- f) The present Head Master of the school has filed complaint at B-12, Ukkadam Police Station, Coimbatore City that somebody has issued a forged record sheet in favour of A.

Ibrahim s/o. Abdul Razak purporting to have been issued by the Head Master of the said school and Crime No.1722 of 2013 is registered under Sections 467, 471 and 420 of the IPC on 31/12/2013.

- g) Verification certificate dated 31/12/2013 issued by the present Head Master Mr. A. Francis Clement Vimal establishes that he verified and compared the available school records and concluded that the alleged admission No.526 is related to S. Dinakaran s/o. Sreedharan, who is some other student of the institution and certainly not the appellant. The record sheet is, therefore, forged. Verification report of the present Head Master is annexed to the counter affidavit. Copies of the complaint filed by the present Head Master, the FIR registered on the basis thereof are also annexed to the

counter affidavit. It is stated that the investigation is in progress.

- h) K. Abdul Razak s/o. Late Sulaiman filed CMP No.57 of 2013 in the court of Judicial Magistrate, Coimbatore stating that he was father of A. Ibrahim, the appellant. He prayed for an order directing the Municipal Corporation to register the birth of the appellant in the Birth Register. The only respondent impleaded therein was the Birth & Death Registrar, Coimbatore City Municipal Corporation. This petition was filed under Section 13(3) of the Birth & Death Registration Act, 1969. Certain documents which were not genuine were filed along with it for a declaration that date of birth of the appellant was 23/5/1980. Inspector of Police, Coimbatore City, ought to have been made a party to the application and it should have

been informed to the court that the documents were to be submitted in the Supreme Court, but that was not done.

- i) The order passed by the Judicial Magistrate shows that it was an ex-parte order. The Birth & Death Registrar, Coimbatore City Municipal Corporation did not appear before the court. It is not mentioned whether the court summons was served on the Birth & Death Registrar. The Magistrate's order states that five documents were produced by the appellant's side and they were marked. These documents were not proved in accordance with the procedures known to law.
- j) The appellant has not produced matriculation or equivalent certificate or date of birth certificate from the school first attended by

him as per Rule 12 of the said Rules. Even though, he has produced a birth certificate issued by the Municipal Corporation, it is evident that the birth of the appellant was not entered in the birth register soon after his birth, but it was entered very recently by the end of 2013. Therefore, the certificate issued by the Corporation does not inspire confidence.

10. In **Abuzar Hossain alias Gulam Hossain v. State of West Bengal**² a three Judge Bench of this Court considered the question as to when should a claim of juvenility be recognized and sent for determination when it is raised for the first time in appeal or before this Court or raised in trial and appeal but not pressed and then pressed for the first time before this Court or even raised for the first time after final disposal of the case. After considering the

² (2012) 10 SCC 489

relevant judgments on the point this Court summarized the position in law as follows:

“39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

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] and **Pawan** [Pawan v. State of Uttaranchal (2009) 15 SCC 259] these documents were not found prima facie credible while in **Jitendra Singh** [Jitendra Singh v. State of U.P. (2010) 13 SCC 523] the documents viz. school leaving certificate, marksheet 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.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the

2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

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."*

11. In **Ashwani Kumar Saxena v. State of M.P.**³ this Court dealt with provisions of the J.J. Act, 2000 and the said Rules. The appellant therein and two others were charge-sheeted *inter alia* for offences punishable under Section 302 of the IPC. The case was pending before the Sessions Court. The appellant filed an application before the Chief Judicial Magistrate under Sections 6 and 7 of the J.J. Act, 2000 claiming that he was a juvenile on the date of the incident and, hence, the criminal court had no jurisdiction to entertain the case and that it be transferred to Juvenile Justice Board. In support of his claim, the appellant

³ (2012) 9 SCC 750

produced the attested marksheets of the High School of the Board of Secondary Education as well as Eighth standard Board Examination. The widow of the victim raised an objection. The appellant's father was examined, who placed reliance on several documents like the appellant's horoscope, transfer certificate issued by his school, etc. The Chief Judicial Magistrate conducted the appellant's ossification test and the medical evidence revealed that the appellant was a major when the offence was committed. The Chief Judicial Magistrate placed reliance on the ossification test and took the view that the appellant was a major on the date of incident. An appeal was carried to the Sessions Court. The Sessions Court severely commented *inter alia* on the evidence of the father of the appellant, on the non-examination of the Pandit who had prepared the horoscope and dismissed the appeal. The High Court confirmed the Sessions Court's order. This Court considered the scheme of the J.J. Act, 2000 and the said Rules and observed as under:

“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.”

12. Though in this paragraph, this Court observed that the question of obtaining medical opinion from a duly constituted Medical Board arises only if the above-mentioned documents are unavailable, this Court went on to further observe that only in those cases, where documents mentioned in Section 12(a) (i) to (iii) of the J.J. Act, 2000 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. Thus in cases where documents mentioned in Section 12(a)(i) to (iii) of the J.J. Act, 2000 are unavailable or where they are found to be fabricated or manipulated, it is necessary to obtain medical report for age determination of the accused. In this case the documents are available but they are, according to the police, fabricated or manipulated and therefore as per the above observations of this Court if the fabrication is confirmed, it is necessary to go for medical report for age determination of the appellant. Delay cannot act as an impediment in seeking medical report as Section 7-A of the J.J. Act, 2000 gives right to an accused to raise the question of juvenility at any point of time even after disposal of the case. This has been confirmed in **Ashwani Kumar**. Moreover, J.J. Act, 2000 is a beneficent legislation. If two views are possible scales must tilt in favour of the view that supports the claim of juvenility. While we acknowledge this position in law there is a disquieting feature of this case which cannot be ignored. We have already alluded to the

counter affidavit of Shri R. Srinivasalu, Inspector of Police. If what is stated in that affidavit is true then the appellant and his father are guilty of fraud of great magnitude. A case is registered against the appellant's father at the Ukkadam Police Station under Section 467, 471 and 420 of the IPC. Law will take its own course and the guilty will be adequately punished if the case is proved against them. Since the case is being investigated, we do not want to express any opinion on this aspect. Till the allegations are finally adjudicated upon and proved, we cannot take registration of the offence against the appellant.

13. In the circumstances, we direct the police to complete the investigation in respect of case registered against the appellant's father (and the appellant, if any) within one month. The charge-sheet, if any, be filed within 15 days thereafter. After filing of the charge-sheet, the trial court shall dispose of the case within two months. The case be disposed of independently and in accordance with law as we have not expressed any final opinion on the merits of that

case. The trial court shall forward its judgment to this Court immediately.

14. List the criminal appeal after the trial court's judgment is received.

.....J.
(RANJANA PRAKASH DESAI)

.....J.
(MADAN B. LOKUR)

NEW DELHI,
JULY 3, 2014.



JUDGMENT