OM PRAKASH

v.

STATE OF RAJASTHAN AND ANR.

(Criminal Appeal No.651 of 2012)

APRIL 13, 2012

[G.S. SINGHVI AND GYAN SUDHA MISRA, JJ.]

Juvenile Justice (Care and Protection of Children) Act, 2000 – Offence of rape – Plea of juvenility by accused – Determination of age of the accused – Medical evidence – Appreciation of – 13½ year old girl allegedly subjected to rape by accused-respondent no.2 and a co-accused – Respondent no.2 claimed to be a juvenile – Both trial court and High Court could not record a conclusive finding of fact that respondent no.2 was a juvenile on the date of the incident, yet granted him benefit of the Juvenile Justice Act to refer him for trial to a juvenile court – On appeal by father of the victim, held: The age of accused-respondent no.2 could not be proved merely on the basis of school record as the courts below inspite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident – In such a situation when the school record itself is not free from ambiguity, medical opinion cannot be allowed to be overlooked or treated to be of no consequence – Opinion of medical experts based on x-ray and ossification test of the accused will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story set up by the father of the accused – While the medical expert who conducted the ossification test opined that accused was 19 years of age on the date of commission of the offence, another medical expert opined on the basis of x-ray films that age of the accused was above 18 years and below 20 years – The doctor's estimation of age although is not a sturdy substance for proof as it is only

A *an opinion, such opinion based on scientific medical test like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused – The situation, however, would be different if the academic records* B *are alleged to have been withheld deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution – In that event, whether the medical evidence should be relied upon or not will depend on the value of the evidence led by* C *the contesting parties – Respondent no.2 and his father failed to prove that respondent no.2 was a minor at the time of commission of offence – Although the Juvenile Justice Act by itself is a piece of benevolent legislation, protection under the same cannot be made available to an accused who in fact* D *is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield – Consequently, accused-respondent no.2 directed to be sent for trial before the court of competent jurisdiction wherein the trial is pending and not to the Juvenile Court as pleaded by him – Medical* E *Jurisprudence.*

Appellant is the father of a 13 ½ year old girl who was allegedly subjected to rape by the accused-Respondent No.2. Respondent no.2 was allowed to avail the benefit of protection under Juvenile Justice (Care and Protection F **of Children) Act 2000, although the courts below could not record a finding that he, in fact, was a juvenile on the date of incident.**

The questions *inter alia* which arose for G **consideration in the instant appeal were:- (i) Whether the respondent/accused herein who is alleged to have committed an offence of rape under Section 376 IPC and other allied sections along with a co-accused who already stands convicted for the offence under Section 376 IPC, can be allowed to avail the benefit of protection** H

to a juvenile in order to refer him for trial to a juvenile court under the Juvenile Justice (Care and Protection of Children) Act, 2000 although the trial court and the High Court could not record a conclusive finding of fact that the respondent-accused was below the age of 18 years on the date of the incident; (ii) Whether the principle and benefit of 'benevolent legislation' relating to Juvenile Justice Act could be applied in cases where two views regarding determination of the age of child/accused was possible and the so-called child could not be held to be a juvenile on the basis of evidence adduced; (iii) Whether medical evidence and other attending circumstances would be of any value and assistance while determining the age of a juvenile, if the academic record certificates do not conclusively prove the age of the accused and (iv) Whether reliance should be placed on medical evidence if the certificates relating to academic records is deliberately withheld in order to conceal the age of the accused and authenticity of the medical evidence regarding the age is under challenge.

Allowing the appeal, the Court

HELD:1. In the instant case, the age of the accused-respondent no.2 could not be proved merely on the basis of school record as the courts below inspite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident. In a situation when the school record itself is not free from ambiguity and conclusively prove the minority of the accused-respondent no.2, medical opinion cannot be allowed to be overlooked or treated to be of no consequence. In this context the statement of NAW-3, the medical jurist who conducted the ossification test of the accused and opined before the court that the accused was 19 years of age is of significance since it specifically states that the accused was not a juvenile on the date of

commission of the offence. The statement of NAW-1, Asstt. Professor in Radiology also cannot be overlooked since he opined that on the basis of x-ray films, the age of the accused is above 18 years and below 20 years. Thus, in a circumstance where the trial court itself could not arrive at a conclusive finding regarding the age of the accused, the opinion of the medical experts based on x-ray and ossification test will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story set up by the father of the accused which prima facie is a cock and bull story. [Para 17] [253-F-H; 254-A-D]

2. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the

evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. [Para 18] [254-D-H; 255-A]

3. In the instant matter, the accused-respondent no.2 is alleged to have committed a crime which repels against moral conscience as he chose a girl of 13 and a half years to satisfy his lust by hatching a plot with the assistance of his accomplice who already stands convicted and thereafter the accused has attempted to seek protection under the plea that he committed such an act due to his innocence without understanding its implication in which his father is clearly assisting by attempting to rope in a story that he was a minor on the date of the incident which is not based on conclusive evidence worthy of credence but is based on a confused story as also shaky and fragile nature of evidence which hardly inspires confidence. It is hard to ignore that when the Additional Sessions Judge in spite of meticulous scrutiny of oral and documentary evidence could not arrive at a conclusive finding that he was clearly a juvenile below the age of 18 years on the date of incident, then by what logic and reasoning he should get the benefit of the theory of benevolent legislation on the foothold of Juvenile Justice Act is difficult to comprehend as it clearly results in erroneous application of this principle and thus there is sufficient force in the contention of the appellant that the benefit of the principle of benevolent legislation can be made applicable in favour of only those delinquents who undoubtedly have been held to be a juvenile which leaves no scope for speculation about the age of the alleged accused. [Para 19] [255-C-G]

4. One cannot overlook that the trial court as well as the High Court while passing the impugned order could not arrive at any finding at all as to whether the accused was a major or minor on the date of the incident and yet

A gave the benefit of the principle of benevolent legislation to an accused whose plea of minority that he was below the age of 18 years itself was in doubt. In such situation, the scales of justice is required to be put on an even keel by insisting for a reliable and cogent proof in support of
B the plea of juvenility specially when the victim was also a minor. [Para 20] [255-H; 256-A-B]

5. The benefit of the principle of benevolent legislation attached to Juvenile Justice Act would thus apply to only such cases wherein the accused is held to
C be a juvenile on the basis of at least *prima facie* evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well planned manner
D reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue. Hence if the plea of juvenility or the fact that he had not attained the age of
E discretion so as to understand the consequence of his heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage
F while determining the age of the accused. [Para 21] [256-C-E]

6. In the facts of this case, the trial court inspite of the evidence led on behalf of the accused, was itself not satisfied that the accused was a juvenile as none of the
G school records relied upon by the respondent-accused could be held to be free from doubt so as to form a logical and legal basis for the purpose of deciding the correct date of birth of the accused indicating that the accused was a minor/juvenile on the date of the incident. Where
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the courts cannot clearly infer in spite of available evidence on record that the accused is a juvenile or the said plea appear to have been raised merely to create a mist or a smokescreen so as to hide his real age in order to shield the accused on the plea of his minority, the attempt cannot be allowed to succeed so as to subvert or dupe the cause of justice. Drawing parallel between the plea of minority and the plea of *alibi,* it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of *alibi* which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/ juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the

A same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.
B [Paras 22, 23] [256-F-G; 258-B-H; 259-A-B]

7. While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical test like
C ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused. The situation, however, would be different if the academic records are alleged to have been withheld deliberately to
D hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the
E contesting parties. [Para 24] [259-C-D-F-H]

Ramdeo Chauhan @ Raj Nath v. State of Assam (2001) 5 SCC 714: 2001 (3) SCR 669 – relied on.

8. Respondent No.2 and his father have failed to
F prove that Respondent No.2 was a minor at the time of commission of offence and hence could not have been granted the benefit of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken
G the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that
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although the Juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to an accused who in fact is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. This will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of the offence. Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged. [Para 25] [260-A-F]

10. This Court therefore deems it just and appropriate to set aside the judgment and order passed by the High Court as also the courts below. Consequently, the accused-respondent no.2 shall be sent for trial before the court of competent jurisdiction wherein the trial is pending and not to the Juvenile Court as pleaded by him. [Para 26] [260-F-G]

Case Law Reference:

2001 (3) SCR 669	**relied on**	**Para 22,24**

CRIMINAL APPELATE JURISDICTION : Criminal Appeal No. 651 of 2012.

From the Judgment & Order dated 19.08.2010 of the High Court of Judicature for Rajasthan, at Jodhpur in S.B. Crl. Revision Petition No. 597 of 2009.

M.R. Calla, Shivani M. Lal, Amit Kumar Singh, Uday Gupta, M.K. Tripathy, Pratiksha Sharma, R.C. Kaushik for the Appellant.

A P.S. Narasimha, Sriram Parabhat, Vishnu Shankar Jain Sushil Kr. Dubey, Pragati Nikhar, R. Gopalakrishnan for the Respondents.

The Judgment of the Court was delivered by

B **GYAN SUDHA MISRA, J.** 1. The Judgment and order dated 19.08.2010 passed by the High Court of Rajasthan at Jodhpur in SBCRR No.597 of 2009 is under challenge in this appeal at the instance of the appellant Om Prakash who is a hapless father of an innocent girl of 13 ½ years who was C subjected to rape by the alleged accused-Respondent No.2 Vijay Kumar @ Bhanwroo who has been allowed to avail the benefit of protection under Juvenile Justice (Care and Protection of Children) Act 2000, although the courts below could not record a finding that he, in fact, was a juvenile since D he had not attained the age of 18 years on the date of incident. Hence this Special Leave Petition in which leave has been granted after condoning the delay.

2. Thus the questions inter alia which require consideration in this appeal are:-

E (i) whether the respondent/accused herein who is alleged to have committed an offence of rape under Section 376 IPC and other allied sections along with a co-accused who already stands convicted for the offence under Section 376 IPC, can be allowed to avail the benefit F of protection to a juvenile in order to refer him for trial to a juvenile court under the Juvenile Justice (Care and Protection of Children) Act, 2000 (shortly referred to as the 'Juvenile Justice Act') although the trial court and the High Court could not record a conclusive finding of fact that the G respondent-accused was below the age of 18 years on the date of the incident?

(ii) whether the principle and benefit of 'benevolent legislation' relating to Juvenile Justice Act could be applied in cases where two views regarding determination of the H age of child/accused was possible and the so-called child

could not be held to be a juvenile on the basis of evidence adduced? A

(iii) whether medical evidence and other attending circumstances would be of any value and assistance while determining the age of a juvenile, if the academic record certificates do not conclusively prove the age of the accused ? B

(iv) whether reliance should be placed on medical evidence if the certificates relating to academic records is deliberately with held in order to conceal the age of the accused and authenticity of the medical evidence regarding the age is under challenge? C

3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that D children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave E offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act, under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the F trial of other adult persons are held.

4. The questions referred to hereinbefore arise in this appeal under the facts and circumstances emerging from the materials on record which disclose that the appellant/ complainant lodged a written report on 23.5.2007 at about 1.00 G p.m. that his daughter Sandhya aged about 13 1/2 years a student of class IX at Secondary School Ghewada was called from the school by the accused Bhanwaru @ Vijay Kumar, son of Joga Ram through her friend named Neetu on 23.2.2007 at about 1.00 p.m. in the afternoon. Neetu told Sandhya that H

A Bhanwroo was in the Bolero vehicle near the bus stand. Sandhya left the school after taking permission from the school authorities and when she reached near the bus stand she did not find the Bolero vehicle. She therefore, made a telephonic call to Bhanwru who told her that he was standing at Tiwri Road
B ahead of bus stand. She then noticed the Bolero vehicle on Tiwri Road, but she did not find Neetu and when she enquired about Neetu, the accused Bhanwroo @ Vijay Kumar son of Joga Ram misguided her and told her that Neetu had got down to go to the toilet after which she was made to sit in the vehicle which
C was forcibly driven towards Tiwri and after a distance of 3-4 Km., a person named Subhash Bishnoi was also made to sit in the vehicle. The vehicle was then taken to a lonely place off the road where heinous physical assault of rape was committed on her by Bhanwroo @ Vijay Kumar and Subhash Bishnoi.
D Since the victim girl/the petitioner's daughter resisted and opposed, she was beaten as a result of which she sustained injuries on her thigh, hand and back. She was then taken towards the village Chandaliya and she was again subjected to rape. Bhanwru then received a phone call after which
E Bhanwru and Subhash dropped her near the village Ghewada but threatened her that in case she disclosed about this event to anyone, she will be killed. Sandhya, therefore, did not mention about this incident to anyone in the school but on reaching home, she disclosed it to her mother i.e. the appellant's/complainant's wife who in turn narrated it to the
F appellant when he came back to village from Jodhpur on 24.2.2007. The appellant could not take an immediate decision keeping in view the consequences of the incident and called his brother Piyush from Jodhpur and then lodged a report with the P.S. Osian on the basis of which a case was registered
G under Section 365, 323 and 376 IPC bearing C.R.No. 40/2007 dated 25.2.2007. In course of the investigation, the accused Bhanwru @ Vijay Kumar was arrested and in the arrest memo his name was mentioned as Vijay Kumar @ Bhanwar Lal son of Joga Ram and his age has been mentioned as 19 years.
H After completion of the investigation, it was found that the

offences under Sections 363, 366, 323 and 376 (2)(g) IPC were made out against the accused Vijay Kumar @ Bhanwar Lal, son of Joga Ram Jat aged 19 years, Subhash son of Bagaram Bishnoi aged 20 years and against Smt. Mukesh Kanwar @ Mugli @ Neetu aged 27 years and hence charge sheet was submitted before the Judicial Magistrate, Osian. Vijay Kumar @ Bhanwar Lal and Subhash were taken in judicial custody.

5. An application thereafter was moved on behalf of the accused Vijay Kumar @ Bhanwar Lal before the Judicial Magistrate, Osian stating that he was a juvenile offender and, therefore, he may be sent to the Juvenile Court for trial.

6. Arguments were heard on the aforesaid application by the concerned learned magistrate on 29.3.2007 and the learned magistrate allowed the application by his order dated 29.3.2007, although the Public Prosecutor contested this application relying upon the police investigation and the medical report wherein the age of the accused was recorded as 19 years. In the application, the stand taken on behalf of Vijay Kumar was that in the school records, his date of birth was 30.6.1990.

7. However, contents of this application clearly reveal that no dispute was raised in the application on behalf of Vijay Kumar that the name of the accused Vijay Kumar was only Vijay Kumar and not @ Bhanwar Lal. It was also not urged that the name of accused Vijay Kumar has been wrongly mentioned in the police papers as Vijay Kumar @ Bhanwar Lal nor in course of investigation it was evaer stated that the case was wrongly registered in the name of accused Vijay Kumar @ Bhanwar Lal. Without even raising this dispute, the academic record of Vijay Kumar @ Bhanwar Lal was produced whereas according to the complainant the factual position is that the name of the accused was Bhanwar Lal which was recorded in the Government Secondary School Jeloo Gagadi (Osian) when he entered the school on 18.12.1993 and again on 22.4.1996 his name was entered in the school register wherein his date of

A birth was recorded as 12.12.1988.

8. The complainant contested the age of the accused Vijay Kumar and it was submitted that the accused Vijay Kumar had been admitted in the 2nd Standard in some private school known as Hari Om Shiksham Sansthan in Jeloo Gagadi (Osian) B with a changed name as Vijay Kumar and there the date of birth was mentioned as 30.6.1990 which was reflected in the subsequent academic records and on that basis the admission card in the name of Vijay Kumar with date of birth as 30.6.1990 was mentioned in the application for treating him as a juvenile.

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9. The case then came up before the Additional Sessions Judge (Fast Tract No.I) Jodhpur as Sessions Case No. 151/ 2007 on 3.10.2007. Shri Joga Ram, the father of the accused moved an application under Section 49 of the Juvenile Justice D (Care and Protection of Children) Act, 2000 stating that the date of birth of his son was 30.6.1990 in his school administration record and, therefore, on the date of incident i.e. 23.02.2007, he was less than 18 years. In this application form dated 3.10.2007, Joga Ram, father of the accused Vijay Kumar had himself stated at three places i.e. title, para in the beginning E and in the first part describing the name of his son (accused) as Vijay Kumar @ Bhanwar Lal stating that his son was born on 30.6.1990 at his house and he was first admitted in the school named Hari Om Shikshan Sansthan, Jeloo Gagadi, Osian on 1.9.1997 in 2nd standard and his son studied in this F school from 1.9.1997 to 15.7.2007 from 2nd standard and the transfer certificate dated 4.7.2007 was enclosed. The said application form had been signed by Joga Ram as father of the accused Vijay Kumar on which the signature of the headmaster along with the seal was also there. In transfer G certificate the date of birth of the accused was also stated along with some other facts in order to assert that Vijay Kumar was less than 18 years of age on the date of the incident. But he had nowhere stated that he had another son named Bhanwru who had died in 1995 and whose date of birth was 12.12.1988. H He attempted to establish that the accused Vijay Kumar is the

younger son of Joga Ram and the elder son Bhanwru had died in the year 1995 and it was he whose date of birth was 1988. He thus asserted that Vijay Kumar in fact was born in the year 1990 and his name was not Bhanwru but only Vijay Kumar. This part of the story was set up by the father of the accused Joga Ram at a later stage when the evidence was adduced. A B

10. The application filed on behalf of the accused Vijay Kumar was contested by the complainant and both the parties led evidence in support of their respective plea. The specific case of the complainant was that Bhanwru Lal and Vijay Kumar in fact are one and the same person and Joga Ram has cooked up a story that he had another son named Bhanwar Lal whose date of birth was 12.12.1988 and who later expired in 1995. The complainant stated that as per the version of the father of the accused if the deceased's son Bhanwar Lal continued in the school up to 24.2.1996, the same was impossible as he is stated to have expired in 1995 itself. According to the complainant Vijay Kumar and Bhanwar Lal are the names of the same person who committed the offence of rape in the year 2007 and the defence taken by the accused was a concocted story merely to take undue advantage of the Juvenile Justice Act. C D E

11. After taking into consideration the oral and documentary evidence, the Sessions Court categorically concluded that in this case no definite clear and conclusive view is possible keeping in view the evidence which has come on record with regard to the age of the accused and both the views are clearly established and, therefore, the view which is in favour of the accused is taken and the accused is held to be a juvenile. The accused Vijay Kumar was accordingly declared to be a juvenile and was directed to be sent to the Juvenile Justice Board for trial. This order was passed by the Additional Sessions Judge (Fast Tract No.1) Jodhpur on 16.5.2009 in Sessions Case No. 151/2007. F G

12. The complainant-appellant thereafter assailed the order H

A of the Additional Sessions Judge holding the respondent Vijay Kumar as a juvenile by filing a revision petition before the High Court. The learned Judge hearing the revision observed that a lot of contradictory evidence with regard to the age and identity of Vijay Kumar @ Bhanwru has emerged and a lot of confusion
B has been created with regard to the date of birth of accused Vijay Kumar @ Bhanwroo. But the learned single Judge was pleased to hold that the Additional Sessions Judge had appreciated the evidence in the right perspective and he is not found to have erred in declaring respondent No.2 Vijay Kumar
C @ Bhanwru to be a juvenile offender. He has, therefore, rightly been referred to the Juvenile Justice Board for trial which warrants no interference. The learned single Judge consequently dismissed the revision petition against which the complainant filed this special leave petition (Crl.) No. 2411/
D 2011 which after grant of leave has given rise to this appeal.

13. Assailing the orders of the courts below, learned counsel for the appellant has essentially advanced twofold submissions in course of the hearing. He had initially submitted that Vijay Kumar alias Bhanwar Lal, son of Joga Ram is the
E same person and Vijay Kumar is the changed name of Bhanwar Lal whose correct date of birth is 12.12.1988 and not 30.6.1990 as stated by Joga Ram, father of the accused. Hence, Vijay Kumar @ Bhanwar Lal was not a juvenile on the date of commission of the offence.

F 14. In order to substantiate this plea, learned counsel for the appellant submitted that in the application which was moved by Joga Ram, father of the accused, before the Additional Sessions Judge under Section 49 of the Juvenile Justice Act, he has nowhere mentioned that he had two sons named Vijay
G Kumar and Bhanwar Lal and that Bhanwar Lal had died in 1995 whose date of birth was 12.12.1988 and his other son Vijay Kumar's date of birth was 30.6.1990. In fact, he himself had mentioned his son's name as Vijay Kumar @ Bhanwru at more than one place in the application and later has planted a story
H that he had two sonce viz., Bhanwar Lal and Vijay Kumar, and

Bhanwar Lal whose date of birth was 12.12.1988 had already died in the year 1995.

15. Learned counsel for the appellant further contended that the benefit of the principle of benevolent legislation conferred on the Juvenile Justice Act, cannot be applied in the present case as the courts below -specially the court of fact which is the Additional Sessions Judge (Fast Track No.1) Jodhpur did not record a categorical finding with regard to the date of birth of the respondent-accused and the aforesaid principle can be applied only to a case where the accused is clearly held to be a juvenile so as to be sent for trial by the juvenile court or to claim any other benefit by the alleged juvenile accused. Counsel for the Appellant has relied upon the evidence of NAW-3 -Medical Jurist, who conducted ossification test of the accused and opined before the court that the accused was 19 years of age and statement of NAW-1 Assistant Professor in Radiology who opined before the court on 23.11.2007 that on the basis of the x-ray films, age of the accused is above 18 years and below 20 years.

16. Learned counsel for the accused-respondent on his part contended that medical opinion could be sought only when matriculation or equivalent certificate or date of birth certificate from the school was not available and since in the present case the admission certificate of the accused from the school record is available which states the date of birth to be 30.6.1990, the school certificate ought to be allowed to prevail upon the medical opinion.

17. We are unable to appreciate and accept the aforesaid contention of learned counsel for the respondent since the age of the accused could not be proved merely on the basis of the school record as the courts below in spite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident. Hence, in a situation when the school record itself is not free from ambiguity and conclusively prove the minority of the accused, medical opinion cannot be allowed

A to be overlooked or treated to be of no consequence. In this context the statement of NAW-3 Dr. Jagdish Jugtawat, the medical jurist who conducted the ossification test of the accused and opined before the court that the accused was 19 years of age is of significance since it specifically states that B the accused was not a juvenile on the date of commission of the offence. The statement of NAW-1 Dr. C.R. Agarwal, Asstt. Professor in Radiology also cannot be overlooked since he opined that on the basis of x-ray films, the age of the accused is above 18 years and below 20 years. Thus, in a circumstance C where the trial court itself could not arrive at a conclusive finding regarding the age of the accused, the opinion of the medical experts based on x-ray and ossification test will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story D set up by the father of the accused which prima facie is a cock and bull story.

18. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident E and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier F approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the courts must be G sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion H of minority. Under such circumstance, the medical evidence

based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates ad school records are alleged to have been with held deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

19. In the instant matter, the accused Vijay Kumar is alleged to have committed a crime which repels against moral conscience as he chose a girl of 13 and a half years to satisfy his lust by hatching a plot with the assistance of his accomplice Subhash who already stands convicted and thereafter the accused has attempted to seek protection under the plea that he committed such an act due to his innocence without understanding its implication in which his father Joga Ram is clearly assisting by attempting to rope in a story that he was a minor on the date of the incident which is not based on conclusive evidence worthy of credence but is based on a confused story as also shaky and fragile nature of evidence which hardly inspires confidence. It is hard to ignore that when the Additional Sessions Judge in spite of meticulous scrutiny of oral and documentary evidence could not arrive at a conclusive finding that he was clearly a juvenile below the age of 18 years on the date of incident, then by what logic and reasoning he should get the benefit of the theory of benevolent legislation on the foothold of Juvenile Justice Act is difficult to comprehend as it clearly results in erroneous application of this principle and thus we find sufficient force in the contention of learned counsel for the appellant that the benefit of the principle of benevolent legislation can be made applicable in favour of only those delinquents who undoubtedly have been held to be a juvenile which leaves no scope for speculation about the age of the alleged accused.

20. We therefore cannot overlook that the trial court as well as the High Court while passing the impugned order could not

A arrive at any finding at all as to whether the accused was a major or minor on the date of the incident and yet gave the benefit of the principle of benevolent legislation to an accused whose plea of minority that he was below the age of 18 years itself was in doubt. In such situation, the scales of justice is
B required to be put on an even keel by insisting for a reliable and cogent proof in support of the plea of juvenility specially when the victim was also a minor.

21. The benefit of the principle of benevolent legislation attached to Juvenile Justice Act would thus apply to only such
C cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well
D planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodege or dupe the arms of law, cannot be allowed to come to his rescue. Hence if the plea of juvenility or the fact that he had not attained the age of discretion so as
E to understand the consequence of his heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage while determining the age of the accused.

F 22. Adverting to the facts of this case we have noticed that the trial court in spite of the evidence led on behalf of the accused, was itself not satisfied that the accused was a juvenile as none of the school records relied upon by the respondent-accused could be held to be free from doubt so as to form a
G logical and legal basis for the purpose of deciding the correct date of birth of the accused indicating that the accused was a minor/juvenile on the date of the incident. This Court in several decisions including the case of Ramdeo Chauhan @ Raj Nath vs. State of Assam, reported in (2001) 5 SCC 714dealing with
H a similar circumstance had observed which adds weight and

strength to what we have stated which is quoted herein as follows :-

> "it is clear that the petitioner neither was a child nor near about the age of being a child within the meaning of the Juvenile Justice Act or the Children Act. He is proved to be a major at the time of the commission of the offence. No doubt, much less a reasonable doubt is created in the mind of the court, for the accused entitling him to the benefit of a lesser punishment, it is true that the accused tried to create a smoke screen with respect to his age. But such effort appear to have been made only to hide his real age and not to create any doubt in the mind of the court. The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakes the faith of the common man in the justice dispensation system has to be discouraged."

The above noted observations no doubt were recorded by the learned Judges of this Court while considering the imposition of death sentence on the accused who claimed to be a juvenile, nevertheless the views expressed therein clearly lends weight for resolving an issue where the court is not in a position to clearly draw an inference wherein an attempt is made by the accused or his guardian claiming benefit available to a juvenile which may be an effort to extract sympathy and impress upon the Court for a lenient treatment towards the so-called juvenile accused who, in fact was a major on the date of incident.

A 23. However, we reiterate that we may not be misunderstood so as to infer that even if an accused is clearly below the age of 18 years on the date of commission of offence, should not be granted protection or treatment available to a juvenile under the Juvenile Justice Act if a dispute B regarding his age had been raised but was finally resolved on scrutiny of evidence. What is meant to be emphasized is that where the courts cannot clearly infer in spite of available evidence on record that the accused is a juvenile or the said plea appear to have been raised merely to create a mist or a C smokescreen so as to hide his real age in order to shield the accused on the plea of his minority, the attempt cannot be allowed to succeed so as to subvert or dupe the cause of justice. Drawing parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not D uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer E injustice by recording an order of conviction in spite of his plea of alibi. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused F than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting G the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him. The benefit of benevolent legislation

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

24. While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical test like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused. In the case of *Ramdeo Chauhan Vs. State of Assam* (supra), the learned judges have added an insight for determination of this issue when it recorded as follows:-

> "Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where the Court gropes in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. *In the absence of all other acceptable material, if such opinion points to a reasonable possibility regarding the range of his age, it has certainly to be considered."*

The situation, however, would be different if the academic records are alleged to have been with held deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the contesting parties.

A 25. In view of the aforesaid discussion and analysis based on the prevailing facts and circumstances of the case, we are of the view that the Respondent No.2 Vijay Kumar and his father have failed to prove that Respondent No.2 was a minor at the time of commission of offence and hence could not have B been granted the benefit of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it C appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that although the Juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to an accused who in fact is D not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. We are under constraint to observe that this will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of the offence. Juvenile Justice Act which is certainly meant to treat a child accused with care and E sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and F hence cannot be encouraged.

26. We therefore deem it just and appropriate to set aside the judgment and order passed by the High Court as also the courts below and thus allow this appeal. Consequently, the G accused Vijay Kumar, S/o Joga Ram shall be sent for trial before the court of competent jurisdiction wherein the trial is pending and not to the Juvenile Court as pleaded by him. We order accordingly.

B.B.B. Appeal allowed.

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