Pawan Kumar Vs State Of Uttar Pradesh & Ors.

Court: Supreme Court Of India

Date of Decision: Nov. 21, 2023

Acts Referred: Juvenile Justice (Care and Protection of Children) Rules, 2007 â€" Rule 12, 12(3)(b)
Juvenile Justice (Care and Protection of Children) Model Rules, 2016 â€" Rule 94
Code of Criminal Procedure, 1973 â€" Section 313, 391
Indian Penal Code, 1860 â€" Section 34, 302, 307, 323, 04
Juvenile Justice Act, 1986 â€" Section 2(h)
Juvenile Justice (Care and Protection of Children) Act, 2000 â€" Section 2(k), 2(l), 7A, 15, 16
Juvenile Justice (Care and Protection of Children) Act, 2015 â€" Section 25

Hon'ble Judges: Sanjay Kishan Kaul, J; Sudhanshu Dhulia, J

Bench: Division Bench

Advocate: Vanshaja Shukla, Rishad Murtaza, Ankeeta Appanna, Rohit K. Singh, Tania Sharma

Final Decision: Partly Allowed

Judgement

Sudhanshu Dhulia, J

1. Leave granted.

2. The appellant before this Court has been convicted by the Additional Sessions Judge, Barabanki in Sessions Trial No.85 of 1996 for offences under

Sections 302 and 307 read with Section 34 of Indian Penal Code, 1860 and has been sentenced to life imprisonment under Section 302/34 and rigorous

imprisonment for 7 years under Section 307/34 with default stipulations. The conviction and sentence of the appellant was upheld in appeal by the

High Court, in its order dated 07.05.2019.

3. There were four accused in the case, which were Gaya Prasad Mishra, Gulab Chandra, Pawan Kumar and Babadeen. The accused Babadeen

passed away during the trial and his case stood abated and the remaining three were convicted for the offences as stated above. The said conviction

has been upheld by the High Court of Judicature of Allahabad (Lucknow Bench). Meanwhile, as far as Gaya Prasad Mishra and Gulab Chandra are

concerned, who are the father and brother of the present appellant respectively, they were released prematurely after remaining in jail for more than

19 years, under the remission policy of the State. Consequently, they have not filed any petition before this Court.

4. The appellant before this Court apart from challenging the impugned order on merits has also raised a claim of being a juvenile at the time of the

alleged commission of the crime (dated 01.12.1995), a plea which has been dismissed by the Trial Court and the High Court.

5. Before us, the learned counsel for the appellant, Ms. Vanshaja Shukla has submitted that the plea of juvenility may be considered first as the claim

of the appellant indeed was that at the time of the incident, he was a juvenile and his plea of juvenility had not been considered in the true letter and

spirit of the applicable law. Consequently, before going through the case on its merits, we have heard the counsel for the appellant at length on the

plea of juvenility.

6. We must state at the very outset that the appellant has been raising the claim of juvenility right since the time of his trial, although belatedly. The

trial court as well as the appellate court after an enquiry have found that the appellant was not juvenile at the time of the incident. Since this plea was

raised before this Court as well, this court had asked for a report from the concerned Additional Sessions Judge, Barabanki and consequently a report

was filed on an earlier occasion before this Court, to which we shall refer in a while. However, the last report (dated 28.09.2022) filed by the

Additional Sessions Judge, Barabanki differs from the earlier findings, and the claim of the appellant being a juvenile at the time of the commission of

crime has been accepted. We shall be referring to this report later.

7. The facts of this case must also be stated here. On 01.12.1995, while the father and brother of the ComplainantÃ, Guru Prasad Mishra were

irrigating their land, water flushed towards the adjacent field belonging to one Gaya Prasad Mishra. The present appellant, who is the son of Gaya

Prasad Mishra reported this to his father and shortly thereafter Gaya Prasad Mishra along with his two sons, Gulab Chandra and Pawan Kumar (the

present appellant), and one Ã¢â‚¬Ëœ BabadeenÃ¢â‚¬â„¢ came to the spot armed with Ã¢â‚¬Å“lathisÃ¢â‚¬ and started assaulting the father and brother of the

complainant. After hearing the Ã¢â‚¬Ëœhue and cryÃ¢â‚¬â„¢, the complainant along with some village persons reached the spot and he was also assaulted by

the accused persons. This incident resulted in grievous injuries on all and ultimately in the death of one Ganga Prasad, brother of the complainant. An

FIR as Crime No.86 of 1995 was then filed in Subeha Police Station in Barabanki District, under Sections 307, 504 and 323 IPC against the four

named accused as mentioned above. As the brother of the complainant (Ganga Prasad) died the same day, Section 302 was added in the FIR.

8. Undoubtedly, the appellant belongs to the aggressor group and had attacked the deceased and caused injuries and ultimately the death of one of the

injured persons. It is also true that some of the assailants, including the present appellant, were armed with Ã¢â‚¬Å“lathisÃ¢â‚¬. We have placed these facts

on record to show the nature of the incident. The accused have committed a heinous crime. Yet they are not hardened criminals. It is also not a

premeditated coldÃ‚â€‹blooded murder.

9. While having his statement recorded under Section 313 of CrPC the age of the appellant was recorded as 18 years and upon further inquiry the

appellant claimed that he was less than 16 years of age at the time of the commission of the offence, i.e., on 01.12.1995. At the relevant time, Juvenile

Justice Act, 1986 was in force where a juvenile in case of a boy, was one who had not completed sixteen years of age. This age however, was

increased to eighteen years by the Juvenile Justice (Care and Protection of Children) Act, 2000 as we shall see later. A formal plea of juvenility was

raised at the stage of trial. In support of his plea, the appellant produced the Scholar Register of the National Inter College, Barabanki which recorded

his D.O.B. as 05.07.1980 which meant that on the date when the offence was committed, the appellant would be 15 years, 6 months, and 26 days old.

However, during crossÃ‚examination the clerk of National Inter College who had produced the Scholar Register, admitted that the entry was made on

the basis of a transfer certificate issued by Purva Madhyamik Vidhyalaya (hereafter referred to as High School, Kamela), which was not placed on

record. Further, the Gram Panchayat Officer was examined who produced the Family Register of the appellant where D.O.B. of the appellant was

recorded as 1975. The day and month of his birth were not mentioned in this Family Register. In any case, as per the Family Register of the Gram

Panchayat, the appellant would be around 20 years of age at the time of the commission of the offence.

In view of this contradiction, a bone ossification test was conducted under the supervision of the Chief Medical Officer of District Hospital, Barabanki

where the age of the appellant was recorded as approximately 19 years. Thus, by order dated 21.08.1999 it was concluded by the Trial Court that the

benefit of juvenility cannot be extended to the appellant and he was directed to face the trial.

10. The appellant filed a Criminal Revision before the High Court against the said order dated 21.08.1999 passed by the Additional Sessions Judge,

Barabanki. The High Court dismissed his criminal revision on 16.09.1999. At the stage of filing the criminal revision the trial was almost complete and

the High Court did not consider it appropriate to interfere with the trial at such a belated stage.

11. The Additional Sessions Judge, Barabanki continued with the trial, where all the accused persons (except Babadeen), including the appellant were

convicted for offences under sections 302/34 and 307/34 of the IPC for which they were sentenced to life imprisonment and 7 years of rigorous

imprisonment, respectively. One of the coÃ‚accused, Babadeen died on 12.12.1998 during the trial and proceedings against him stood abated by order

dated 04.01.1999 passed by the Trial Court.

12. Against the order of conviction dated 11.02.2000 passed by the Trial Court all the accused filed their appeal before the High Court of Judicature at

Allahabad (Lucknow Bench). During the pendency of the appeal, the appellant filed a Criminal Miscellaneous Application under Section 391 of the

CrPC for placing additional evidence on record regarding his juvenility. Accordingly, the appellant produced Transfer Certificate dated 05.07.1995

issued by High School, Kamela based on which the Scholar Register of National Inter College, Barabanki which had recorded the age of the appellant

as 05.07.1980. Nevertheless, the High Court vide its order dated 07.05.2019, dismissed the Criminal Appeal of all the three accused, including the plea

of juvenility raised by the appellant. The High Court also noted that the State Government had meanwhile remitted the sentence of the other two coÃ‚â€■

accused as both had undergone more than 19 years of imprisonment. However, the appellant was directed to surrender and to carry out his sentence.

While rejecting the plea of juvenility, the reasons given by the High Court are as follows:

Ã¢â‚¬Å“20...It is undisputed that juvenility can be examined at any stage, if raised by the accused person. In the present case, appellant no. 3

has raised the point of his juvenility before the trial court, which was dealt with after examining the court witnesses and evidences placed by

means of parivar register, radiological report, C.M.O. report and the scholar register of Rashtriya Inter College and rejected by the court

below vide order dated 21.08.1999. As no good ground has been taken in the present appeal of juvenility of appellant no. 3. It is also

relevant to mention here that aforesaid order dated 21st August, 1999 was challenged by the appellant no. 3 in Criminal Revision No. 271

of 1999, which was also dismissed by this Court vide order dated 16.09.1999Ã¢â‚¬â€‹.

The appellant had mostly remained on bail during the period of trial and appeal, but consequent to the decision of the High Court, he surrendered on

29.07.2019 and since then he has been in jail. By now he has served a sentence of about 4 Ã‚Â½ years.

13. The specific grievance of the appellant in the present case is that the Trial Court had not accepted the veracity of the Scholar Register of National

Inter College, Barabanki because it was based on a Transfer Certificate issued by High School, Kamela which was not on record. However, when

the appellant had placed the same on record, in his application under Section 391 of CrPC, the same ought to have been considered.

14. This Court passed order dated 08.10.2021 and directed the Trial Court to submit a fresh report on the plea of juvenility raised by the appellant,

after appreciating the additional evidence. The order dated 08.10.2021 of this Court reads as under: Ã‚â€‹

Ã¢â‚¬Å“Ã¢â‚¬Â¦Learned counsel for the petitioner submits by reference to additional documents that CM No.96164/2012 was filed under Section 391 of the

Cr.P.C for taking on record additional documents in the form of transfer certificate showing the date of birth of the applicant as 05.07.1980. She has

also filed a document regarding listing of the applications as on 29.01.2020 before the High Court of Judicature at Allahabad, Lucknow Bench to show

such application as pending as on 01.11.2012 for disposal. It is thus, her submission that the application seeking to bring on record additional documents

in support of the plea of juvenility was never dealt with.

Our attention has been invited at para 20 of the impugned order which recognizes that plea of juvenility was raised before the trial Court and was

rejected by the order dated 21.08.1999. It has been observed that no ground has been taken in the appeal of juvenility of appellant No.3 possibly

because a Criminal Revision was filed against the order dated 21.08.1999 being Criminal Revision No.271/1999 which was also dismissed by the High

Court on 16.09.1999.

It is correct that in the grounds of appeal before the High Court no plea of juvenility was raised. The plea of the petitioner is predicated only on CM

No.96164/2012 filed seeking to raise the plea of juvenility based on the additional grounds.

In view of the aforesaid facts and circumstances, we are of the view that the additional documents brought on record ought to have been examined

and they require examination as to whether the petitioner can raise the plea of juvenility.

We thus, refer the matter to the trial Court for recording evidence on the basis of the certificates sought to be produced by the petitioner as a transfer

certificate and submit a report to this CourtÃ¢â‚¬Â¦.Ã¢â‚¬â€‹

15. Accordingly, the First Additional Sessions Judge, Barabanki in compliance of the order of this Court had submitted a Report dated 28.02.2022.

According to this report, the D.O.B of the appellant should be taken as recorded in the Family Register, which is 1975 and therefore at the time of the

commission of the offence he was not a juvenile. The Trial Court had examined the entry of the Scholar Register of the National Inter College,

Barabanki where the D.O.B of the appellant was 05.07.1980. The D.O.B entered in the Scholar Register was based on a Transfer Certificate dated

05.07.1995 issued by High School, Kamela which had also been placed on record by the appellant, however, the original records of High School,

Kamela were not produced and the evidence of the Family Register and bone ossification test was also against the appellant. By comparing these

evidences, the Trial Court declared the D.O.B of the appellant to be 1975 and consequently, the report of the Additional Sessions Judge dated

28.02.2022 declared that the appellant was not a juvenile on the date of the commission of the alleged offence.

16. The report dated 28.02.2022 was examined by this Court and it was felt that the Trial Court did not examine the Transfer Certificate of the

appellant, which was placed before it. Hence, the issue was again remitted back to the Additional Sessions Judge, Barabanki on 15.07.2022 by this

Court for fresh consideration on the aspect of juvenility and another report was directed to be filed. The Order of this Court dated 15.07.2022 is as

follows:

Ã¢â‚¬Å“We have perused the report of the First Additional Sessions Judge, Barabanki dated 28.02.2022 but that report does not analyze the

transfer certificate which is the document sought to be relied upon by the petitioner as an additional document before the High Court for

which an application had been filed before it. That is what is required to be considered.

Undisputedly, the other documents do not go in favour of the petitioner and show the age as more than 16 years.

It appears that the District Judge has not analysed the document or its veracity which is what is required to be considered.

We have thus, no option but to remit the matter back to the District Judge, Barabanki to appreciate the purport of our order and carry out

the enquiry in that behalf and then submit a report to us.

Learned counsel for the petitioner states that the original document is in the possession of the petitioner and will be filed with an affidavit

before the District Judge.

The enquiry report to be submitted within a period of three months from the date of the receipt of this order.

List on the enquiry report being received.Ã¢â‚¬â€‹

17. In compliance of the said order the Additional Sessions Judge, Barabanki filed a fresh report dated 28.09.2022. In this report the D.O.B has been

determined as 05.07.1980. If this report is accepted then the appellant was 15 years, 4 months, and 26 days old at the time of commission of the crime

which occurred on 01.12.1995. The relevant observation of the report is given as under:

Ã¢â‚¬Å“18. In the end, it is humbly submitted that the date of birth of Pawan Kumar, right from the first school where he was admitted, up to the

last school where he has studied, as per the relevant documents of each school has remained the same i.e., 05.07.1980 (AnnexureÃ‚1) which

has been issued by the Principal of PreÃ‚secondary School Kamela, mentioning his date of birth as 05.07.1980, matches with the date of

birth of Pawan Kumar as has been mentioned in the relevant registers/documents of each and every school, where the petitioner has studied

at different stages of his educationÃ¢â‚¬â€‹.

18. On behalf of the appellant, we have heard ld. counsel Ms. Vanshaja Shukla and learned senior counsel Mr. Ardhendumauli Kumar Prasad,

Additional Advocate General (AAG) for the State of Uttar Pradesh. Before we deal with the submissions made by both sides, it would be prudent to

examine some of the relevant statutory provisions.

19. The age of a juvenile has to be determined on the basis of the date of the alleged commission of the crime. The present incident which involved

the appellant in a crime inter alia under Section 302 IPC was allegedly committed on 01.12.1995. At the relevant point of time, the Act which was in

force for juvenile offenders was known as Juvenile Justice Act, 1986. In the said Act, Section 2(h) defined juvenile as follows:

Ã¢â‚¬Å“(h) Ã¢â‚¬Å“juvenileÃ¢â‚¬â€‹ means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen yearsÃ¢â‚¬â€‹

In the case of the present appellant, the relevant age apparently was 16 years. In order to be a juvenile, he should not have attained the age of 16

years. Till the time the sessions court finally convicted the appellant, inter alia, under Section 302 of the IPC, the above provision of law was in force.

The Trial courtÃ¢â‚¬â„¢s decision is of 11.02.2000.

20. Meanwhile, during the pendency of the appeal before the High Court, the Juvenile Justice (Care and Protection of Children) Act, 2000 came into

force on 01.04.2000, inter alia, repealing the 1986 Act. There were some major changes in the 2000 Act. The first and foremost was the definition of

juvenile itself. Section 2(k) defined the Ã¢â‚¬Å“juvenileÃ¢â‚¬â€‹ as follows:

Ã¢â‚¬Å“(k) Ã¢â‚¬Å“juvenileÃ¢â‚¬ or Ã¢â‚¬Å“childÃ¢â‚¬ means a person who has not completed eighteenth year of ageÃ¢â‚¬ The definition of Ã¢â‚¬Å“juvenile in

conflict with lawÃ¢â‚¬â€‹ under Section 2(l), which stood amended in 2006 is as follows:

Prior to the 2006 amendment, it reads as follows:

(l) Ã¢â‚¬Å“juvenile in conflict with lawÃ¢â‚¬â€‹ means a juvenile who is alleged to have committed an offence. (w.e.f. 22.08.2006)

Ã¢â‚¬Å“(l) Ã¢â‚¬Å“juvenile in conflict with lawÃ¢â‚¬ means a juvenile who is alleged to have committed an offence and has not completed eighteenth

year of age as on the date of commission of such offenceÃ¢â‚¬â€‹

The 1986 Act made a distinction between a boy and a girl as to their claim of juvenility. In the case of boys, it was 16 years, whereas for girls it was

18 years. The 2000 Act, not only removed this distinction but also raised the age of juvenility from 16 years to 18 years.

21. The majority opinion of 4:1 in a Constitution Bench decision of this Court in the case of Pratap Singh v. State of Jharkhand and Another (2005) 3

SCC 551, held as follows:

Ã¢â‚¬Å“(a) The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced

before the authority or in the court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the

2000 Act came into force and the person had not completed 18 years of age as on 01.04.2001.Ã¢â‚¬â€‹

Subsequent to the decision in Pratap Singh (supra) certain amendments were made in the 2000 Act. Section 7A was introduced which reads

as follows:

Ã¢â‚¬Å“[7Ã‚A. Procedure to be followed when claim of juvenility is raised before any court.Ã¢â‚¬"(1) Whenever a claim of juvenility is raised

before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall

make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record

a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the

case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile

has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under subÃ‚section (1), it shall forward the juvenile

to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.]Ã¢â‚¬â€‹

The definition of Ã¢â‚¬Å“juvenile in conflict with lawÃ¢â‚¬â€‹ was also amended which we have already referred above.

22. In addition, comprehensive Rules known as Juvenile Justice (Care and Protection of Children) Rules, 2007, were also made, inter alia, laying down

a detailed procedure as to the determination of the age of a juvenile. Rule 12 of the said Rules is as follows:

Ã¢â‚¬Å“12. Procedure to be followed in determination of Age.Ã¢â‚¬"(1) In every case concerning a child or a juvenile in conflict with law, the

court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or

child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the

case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to

the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the

Board or, as the case may be, the Committee by seeking evidence by obtainingÃ¢â‚¬

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

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

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical

Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as

the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by

considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as

the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the

absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of

any of the conclusive proof specified in subÃ‚rule (3), the court or the Board or as the case may be the Committee shall in writing pass an

order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order

shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7Ã‚A, Section 64 of the Act and these

rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other

documentary proof referred to in subÃ‚â€‹rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined

in accordance with the provisions contained in subÃ‚rule (3) and the Act, requiring dispensation of the sentence under the Act for passing

appropriate order in the interest of the juvenile in conflict with law.Ã¢â‚¬â€‹

(emphasis supplied)

23. Although, during the pendency of the appeal before the Allahabad High Court (Lucknow Bench), the Juvenile Justice (Care and Protection of

Children) Act, 2015 had come into force repealing the 2000 Act and subsequent to the 2015 Act, comprehensive and detailed Model Rules relating to

Ã¢â‚¬Å“juvenile in conflict with lawÃ¢â‚¬ known as Juvenile Justice (Care and Protection of Children) Model Rules (hereinafter referred to as Ã¢â‚¬ËœJJ Rules,

2016Ã¢â‚¬â„¢) were laid down. Rule 94 of the JJ Rules, 2016 also repeals the 2007 Rules.

Ã¢â‚¬Å“94. Repeal.Ã¢â‚¬"The Juvenile Justice (Care and Protection of Children) Rules, 2007 notified vide G.S.R. 679(E) dated 26th October,

2007 and as amended vide GSR 903(E) dated 26th December 2011, are hereby repealed:

Provided that any action taken or order issued under the provisions of the Rules of 2007 prior to the notification of these rules shall, in so

far it is not inconsistent with the provisions of these rules, be deemed to have been taken or issued under the provisions of these rules.Ã¢â‚¬â€‹

Nevertheless, the 2015 Act contains an important Section, which is Section 25, which reads as follows:

Ã¢â‚¬Å“25. Special provision in respect of pending cases.Ã¢â‚¬"Notwithstanding anything contained in this Act, all proceedings in respect of a

child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be

continued in that Board or court as if this Act had not been enacted.Ã¢â‚¬â€‹

24. In Satya Deo alias Bhoorey v. State of Uttar Pradesh (2020) 10 SCC 555, the impact of Section 25 of the 2015 Act has been explained in detail.

The expression Ã¢â‚¬Å“all proceedingsÃ¢â‚¬â€‹ would not only mean the trial but will also include revision or appeal.

Consequently, since at the commencement of 2015 Act the proceedings of the present appellant were pending before the High Court (the appeal was

decided on 07.05.2019), Section 25 of the 2015 Act would be attracted. It would mean that what would be applicable in the present case would be the

2007 Rules, including Rule 12 which we have referred above. This aspect has also been examined in great detail in Hariram v. State of Rajasthan and

Another (2009) 13 SCC 211.

25. In other words, what would be applicable in the present case regarding the determination of the age of the appellant would be the 2000 Act and

the Rules framed therein i.e., 2007 rules. Rule 12 has an important bearing in the present case, which we have already referred above. The first

document under the 2007 Rules which has to be considered for determination of the age of a person who is claiming juvenility is the matriculation

certificate and the settled position here is that the appellant had not done his matriculation and there is no question of the appellant having such a

certificate. The other document which then becomes relevant is the school leaving certificate of Primary School, Bhatgawan, which is also his

certificate of age.

26. One important aspect which was missed by the High Court as well as the Additional Sessions Judge in his report dated 28.02.2022, was the

provisions of Rule 12 of the 2007 Rules which are applicable for determination of age in the present case and, in particular, the provision under subÃ‚â€■

rule (3)(b) of Rule 12 which states that Ã¢â‚¬Å“in the case exact assessment of the age cannot be done, the Court or the Board or, as the case may be,

the committee for the reasons to be recorded by them, may, if considered necessary give benefit to the child or juvenile by considering his/her age on

lower side within the margin of one yearÃ¢â‚¬. We are of the considered view that in the present case, even assuming for the sake of argument that

there were some conflicting aspects as to the age of the appellant but since the margin of age was so thin, the aforesaid benefit ought to have been

given to the appellant.

27. From perusal of the report dated 28.09.2022 the following facts emerge. The appellant had attended three schools during his life time. The first

was the Primary School at Bhatgawan in Barabanki. The second was High School, Kamela, Barabanki and the third was National Inter College,

Ranapur, Barabanki (in chronological order). The admitted position is that the appellant had not completed his matriculation at the time of the incident

in the year 1995 and therefore the only evidence he could place before the authorities was the copy of the admission register of National Inter College

and the transfer certificate of the college, which had recorded his date of birth to be 05.07.1980. The appellant took admission in National Inter

College, Barabanki on 25.07.1995 and thereafter since he could not pay his tuition fee, his name was removed as a student from the college register

on 30.12.1995. The date of birth which was registered in the said school was 05.07.1980. The date of birth, however, was not taken to be the correct

date of birth in the earlier findings, since the appellant had not produced any certificate before the inquiry officer on the basis of which the date of birth

i.e., 05.07.1980 was registered in the school register of National Inter College. In the subsequent enquiry though he submitted the transfer certificate

from the earlier school register but the same could not be verified to the satisfaction of the inquiry officer and consequently the date of birth as

claimed by the appellant (05.07.1980) was not accepted. In the latest enquiry, which has been conducted by the Additional Sessions Judge, Barabanki

dated 28.09.2022, the appellant had produced relevant certificates of all three schools he had attended.

28. First is the certificate from Primary School Bhatgawan, Barabanki, which was the first school attended by the appellant and where his date of

birth recorded was 05.07.1980. The Sessions Judge himself has seen the school register of the school and had taken the statement of the principal of

the school to consider the veracity of the school register. The other documents examined were the transfer certificates of High School, Kamela and

National Inter College and the relevant registers of the said schools. The Additional Sessions Judge, who did not doubt the veracity of any of these

documents which were placed before him, has given a categorical finding that what has been consistent is that, in all the schools that he has attended,

his date of birth remains the same i.e., 05.07.1980.

29. However, there are two certificates which have not been considered by the Additional Sessions Judge in his latest report. The first is the Family

Register in which the year in which appellant was born is recorded as 1975. As deposed by the concerned Gram Panchayat Officer, there is no

precise date of birth recorded in the Family Register and what has been recorded, is that the appellant was born in the year 1975. All the same this

certificate will not have the same evidentiary value as the school certificates in the present case. Moreover, the entry is also not a precise entry.

Under the 2007 Rules (i.e., Rule 12), the school certificates are given more importance than a Panchayat Register. The school leaving certificate of

the first school attended by the appellant which is Primary School, Bhatgawan will be a certificate that is liable to be considered and the certificate is a

valid proof of evidence for determination of the age of the appellant. [Shah Nawaz v. State of Uttar Pradesh and Another (2011) 13 SCC 751

Paragraph 24]. The second certificate is the medical report of the appellant i.e., Bone Ossification Test conducted on 05.02.1996 which is about two

months after the alleged incident where the certificate of the test show that he was about 19 years of age. The Radiologist (CWÃ‚3) who had

conducted the test was examined in the trial, on being questioned about the veracity of the report by the defence, he said that although he had

examined the appellant and conducted the Bone Ossification Test but, he did not give the precise years i.e., 19 years to be the age of the appellant.

According to him this has been done by the Chief Medical Officer (CMO). The C.M.O was never examined in the trial. In any case, a bone

ossification test, which is primarily done to determine the age, does not give the precise age but is at best an approximation.

30. Further, it must also be kept in mind that the medical opinion based on Bone Ossification Test, is not entirely accurate. This Court in the case of

Vinod Katara v. State of U.P. 2022 SCC OnLine SC 1204 has held the following:

60. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual

characteristics such as the growth rate of bones and skeletal structures can affect the accuracy of this method. This Court has observed in

Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681 : (2010) 2 SCC (Cri) 1194, and Jyoti Prakash Rai v. State of Bihar, (2008) 15 SCC

223 : (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of

the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test

irrespective of whether the ossification test of multiple joints is conducted. The courts in India have accepted the fact that after the age of

thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of

age is the degree of probability and not proof beyond reasonable doubt.

31. In a case of juvenility where two views are possible, this Court has held that a liberal approach should be undertaken. This position was laid down

by this Court in the case of Arnit Das v. State of Bihar (2000) 5 SCC 488 where it was held that:

Ã¢â‚¬Å“19Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦.

(ii) a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the

plea that he was a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to

be a juvenile in borderline cases; andÃ¢â‚¬â€‹

This proposition of taking a liberal view and about extending the benefit of juvenility where two views are available has been reiterated by

this Court in numerous subsequent decisions such as Mukarrab and Others v. State of Uttar Pradesh (2017) 2 SCC 210, Ashwani Kumar

Saxena v. State of Madhya Pradesh (2012) 9 SCC 750 [Para 13] as well as Rishipal Singh Solanki v. State of Uttar Pradesh (2022) 8 SCC

602 which concluded as follows in para 33.8:

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline

cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time,

the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

32. Even if the medical report which shows the age of the appellant as 19 years is taken to be correct even then in a case where an exact assessment

of age was not possible, considering the conflicting reports and documents in our considered opinion, the provision given in subÃ‚rule 3(b) of Rule 12

would come into play and the Court ought to have given the appellant a benefit of one year in the present case.

Consequently, we accept the report of the Additional Sessions Judge, Barabanki dated 28.09.2022 and declare that the appellant was a juvenile on the

date of the commission of crime i.e., on 01.12.1995.

33. The other two coÃ‚accused i.e., Gaya Prasad Mishra and Gulab Chandra have been convicted and sentenced inter alia to life imprisonment.

Although both of them have been prematurely released by the State Government under its remission policy, yet the fact remains that they were

convicted (along with the appellant), for the offences under Sections 302/34 and 307/34 by the Trial Court in trial as well as by the High Court in

appeal after examining the entire evidence in detail. The role assigned to the present appellant is no different than the role assigned to the other two

accused who were convicted under Sections 302 and 307 read with Section 34 IPC. It is exactly the same role and clearly section 34 of the Indian

Penal Code is also attracted. We have already declared the appellant as a juvenile, but there is also an order of conviction against the appellant, which

is based on the evidence placed by the prosecution against the other two accused and the present appellant, which is common. It is not possible

therefore to take a different view for the present appellant than what has been taken by the Trial Court and the Appellate court against the other two

accused regarding their conviction. Therefore, we sustain the conviction of the appellant under Sections 302 and 307 IPC read with Section 34 IPC,

but all the sentences which have been awarded to him are hereby quashed as such sentences cannot be given to a juvenile, in view of Section 16 of

the Juvenile Justice Act, 2000.

34. The appeal is partly allowed on the question of juvenility as indicated hereinabove, and the order of the High Court will stand modified to this

extent. The appellant is presently in jail. He should be around 43 years of age as of now. Considering all the relevant aspects including the fact that the

appellant has already been declared a Juvenile by this Court and in view of Sections 15 and 16 of Juvenile Justice Act, 2000, since the maximum

period for which a juvenile can be detained is three years and the appellant has already undergone imprisonment for 4 Ã‚Â½ years, we hereby order that

the appellant be released forthwith, unless he is required in some other crime.