

**SUPREME COURT OF INDIA****Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 5th March, 2024**

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION(CRL.) NO(S). 121 OF 2022

**VINOD KATARA ...PETITIONER(S)****VERSUS****STATE OF U.P. ...RESPONDENT(S)****Legislation:**

Section 302 , 34 of the Indian Penal Code, 1860 (IPC)

Juvenile Justice (Care and Protection of Children) Act, 2015

**Subject:** Challenge against conviction for murder with the claim of juvenility at the time of the incident.**Headnotes:**

Claim of Juvenility – Petitioner convicted of murder in 1986, claimed juvenility at the time of incident (10th September, 1982) based on a medical report and family register – Petitioner’s age was a central issue in determining eligibility for relief under the Juvenile Justice Act. [Paras 1-5]

Medical Examination and Age Determination – Medical Board conducted age estimation via X-rays, opining petitioner around 56 years old in 2021 –

Claimed petitioner was around 15 years in 1982 – Ossification test and family register scrutinized for age verification. [Paras 5, 7]

Inquiry by Sessions Court – Ordered by Supreme Court to examine petitioner's claim and authenticity of the family register – Found petitioner's date of birth as 2nd July, 1960, and that he was major at the time of incident – Medical opinion noted uncertainty in age estimation based on X-ray after 25 years of age. [Paras 6, 7, 17-19]

Legal Argument and Court's Observation – Petitioner contested inquiry findings, arguing discrepancies in the family register and school records – The court considered school records more reliable in age determination under Section 94(2) of the JJ Act. [Paras 9-14, 20]

Dismissal of Writ Petition – Supreme Court found no merit in the petition based on detailed inquiry and evidence – Upheld the decision that the petitioner was not a juvenile at the time of the incident and dismissed the writ petition. [Para 21]

#### **Referred Cases:**

### **J U D G M E N T**

#### **Mehta, J.**

1. This writ petition arises from a very peculiar set of facts and circumstances.
2. The petitioner herein was arraigned as an accused for the offence of murder committed on 10<sup>th</sup> September, 1982. The petitioner along with three co-accused was convicted by the trial Court for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') vide judgment dated 6<sup>th</sup> January, 1986 and were sentenced to undergo rigorous imprisonment for life.
3. The convicts including the petitioner herein preferred Criminal Appeal No. 133 of 1986 before the Allahabad High Court. During the pendency of appeal, the sentence awarded to the petitioner by the trial Court was suspended and he was released on bail. The said appeal came to be rejected vide judgment

dated 4<sup>th</sup> March, 2016 and the conviction of the petitioner and the sentence awarded to him by the trial Court were affirmed. The petitioner was taken into custody after the dismissal of the appeal by the High Court.

4. The petitioner preferred Special Leave Petition (Crl.) No.6048 of 2016 assailing the judgment rendered by the Allahabad High Court. The said Special Leave Petition was dismissed by this Court vide order dated 16<sup>th</sup> August, 2016.
5. The High Court of Judicature at Allahabad, while considering a PIL bearing Crl.(PIL) Misc. W.P. No. 855 of 2012, vide order dated 24<sup>th</sup> May, 2012 directed the Juvenile Justice Board(s) (hereinafter being referred to as the 'Board') in the State of Uttar Pradesh to hold enquiries for determination of age of the convicts who were languishing in jail wherein the possibility was felt that the convict might have been a juvenile at the time of incident. Pursuant to the said order of the High Court, the petitioner herein who was at the relevant point of time lodged in District Jail, Mathura was subjected to examination by a Medical Board on 10<sup>th</sup> December, 2021. The Medical Board conducted X-rays of the skull and sternum of the petitioner and gave an opinion that on the date of the report, the petitioner herein was around 56 years of age. Based on the said report of the Medical Board, the petitioner has preferred the instant writ petition claiming that he was around 15 years of age on the date of the incident i.e. 10<sup>th</sup> September, 1982 and has sought the following substantive relief :-

“In the light of the abovementioned facts and circumstances, the petitioner through this instant petition prays before this Hon’ble Court as under:-

- A. issue a writ of mandamus or any other similar writ, order or direction thereby directing the respondent State to verify the claim of juvenility and thereafter pass necessary orders as it deems fit in the facts and circumstances of the case.”
6. The matter was heard at length on 12<sup>th</sup> September, 2022, and this Court passed an order with the following pertinent directions:-  
“(i) We direct the Sessions Court, Agra to examine the claim of the writ applicant to juvenility in regard with law within one month from the date of communication of this order;

- (ii) The concerned Sessions Court shall also examine the authenticity and genuineness of the Family Register sought to be relied upon by the writ applicant convict considering that the document does not appear to be contemporaneous. This document assumes importance, more particularly in light of the fact that the ossification test report may not be absolutely helpful in determining the exact age of the writ applicant on the date of the incident. If the Family Register on record is ultimately found to be authentic and genuine, then we may not have to fall upon the ossification test report. In such circumstances, the Presiding Officer concerned shall pay adequate attention towards this document and try to ascertain the authenticity and genuineness of the same. If need be, the statements of the persons concerned i.e. from the concerned government department may also be recorded;
  - (iii) The Sessions Court shall ensure that the writ applicant convict is medically examined by taking an ossification test or any other modern recognized method of age determination;
  - (iv) The Sessions Court concerned shall submit its report as regards the aforesaid to this Court within one month from the date of communication of this order;
  - (v) The Registry is directed to forward one copy of this order to Sessions Court, Agra;
  - (vi) We request the learned counsel appearing for the State to take appropriate steps to facilitate the Sessions Court to complete the enquiry.”
7. The inquiry in pursuance to the said direction was conducted by the learned Additional District and Sessions Judge, Court No. 5, Agra who has forwarded a report dated 21<sup>st</sup> October, 2022 opining that from the contemporaneous evidence placed during the inquiry, the date of birth of the petitioner was 2<sup>nd</sup> July, 1960 and he was major on the date of the incident. The learned Additional District and Sessions Judge took note of the fact that medical examination of the convict Vinod Katara was conducted by Medical Board in compliance of the directions given by this Court and the Chairman of the Board had given an opinion that the probable age of accused Vinod Katara

- was between 55 to 60 years with a remark that estimation of age based on X-ray examination becomes uncertain after the age of 25 years.
8. After receiving the report, this Court permitted learned counsel for the petitioner as well as learned counsel for the respondent to submit their response thereto. Final arguments were heard on 17<sup>th</sup> January, 2024.
  9. Mr. Rishi Malhotra, learned counsel appearing for the petitioner vehemently and fervently contended that the conclusions drawn by the learned Additional District and Sessions Judge in the report dated 21<sup>st</sup> October, 2022 that it would not be possible to determine the age of the accused accurately based on the X-ray examination is unsustainable in light of the earlier medical report dated 10<sup>th</sup> December, 2021 wherein the Medical Board has given a pertinent opinion that the age of the petitioner as on the said date was around 56 years.
  10. As per the learned counsel, if the entries made in the contemporaneous documents relied upon by the Additional District and Sessions Judge are perused, it would become evident that the petitioner was born in the same year as his brother Ashok Kumar, i.e., 1960 which would lead to a situation of serious anomaly. He urged that the documentary evidence presented by the convict petitioner in the inquiry held by the learned Additional District and Sessions Judge conclusively establishes that after the birth of Ashok Kumar and before the birth of the petitioner, two other sons were born to the petitioner's parents in the intervening years. However, both these children expired because of medical complications. He vehemently contended that the attendance register/school record on which the learned Additional District and Sessions Judge placed implicit reliance is not a reliable piece of evidence because the concerned Principal of the school neither verified the documents nor was he examined in evidence.
  11. Learned counsel further urged that the assumption drawn by the learned Additional District & Sessions Judge that there has been an overwriting in the family register wherein numerical '0' has been changed to numerical '8' is without any foundation. He contended that as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter being referred to as the 'JJ Act'), where contemporaneous reliable school record is not available, the Court can place reliance either on other documentary evidence or in absence thereof, the Medical Board's opinion based on X-ray examination can be taken into account to determine the age of the person claiming juvenility.
  12. Learned counsel urged that school record produced during inquiry is not a reliable piece of evidence and the family register wherein the year of birth of

the petitioner is shown to be 1968 as well as the medical report dated 10<sup>th</sup> December, 2021 deserve to be given precedence and accepted for extending the prayer made by the petitioner that he was a juvenile on the date of the incident. He thus, submitted that the petitioner is entitled to consequential relief of being released from prison.

13. *Per contra*, Mr. Ardhendumauli Kumar Prasad, learned AAG vehemently opposed the submissions advanced by the learned counsel for the petitioner and urged that the inquiry report has been submitted by the learned Additional District and Sessions Judge, as a consequence of direction given by this Court. Such inquiry report is based on detailed process of collection of evidence and analysis thereof.
14. He submitted that the inquiry officer, i.e., the learned Additional District and Sessions Judge, after minute appreciation and evaluation of the evidence has categorically found that the date of birth of the petitioner as entered in the contemporaneous school record was 2<sup>nd</sup> July, 1960, which is the actual date of birth of the petitioner and as a consequence, the petitioner does not deserve the relief claimed for.
15. We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have carefully perused the order dated 16<sup>th</sup> August, 2016 passed by this Court and so also the enquiry report dated 21<sup>st</sup> October, 2022 forwarded by the learned Additional District and Sessions Judge.
16. The learned Additional District and Sessions Judge recorded evidence during the course of the inquiry and gave detailed findings holding that the family register brought on record by the petitioner was a forged document and was unreliable. It may be stated that a copy of the family register issued on 2<sup>nd</sup> March, 2022 was placed on record by the petitioner during the course of inquiry. The inquiry officer issued a notice to the Assistant Block Development Officer, Panchayat, Fatehpur Sikri, Agra and in his examination, the officer clearly stated that the original register on the basis of which said family register has been prepared was not available in the record of the Panchayat, Aulenda.
17. The learned Additional District and Sessions Judge gave the following opinion doubting the veracity of the family register relied upon by the petitioner:-  
“...This is also getting confirmed from Page No.133 of the Family Register because probable date of birth of petitioner Shashi w/o Vinod Kumar, is mentioned as 1965 on the said page. Generally, age of wife is some years less than husband. In the instant matter, in the family

register, year of birth of wife of petitioner in the family register is 1965 whereas year of birth of her husband is mentioned as 1968 which is forged by which age of wife Shashi is becoming 3 years more than her husband Vinod Kumar. In general circumstances, it is not possible. It is clear from aforesaid appreciation that family register produced by petitioner is not authentic but a document doubtful in nature which does not appear to be a credible document.”

18. The learned Additional District and Sessions Judge also summoned the record from the Pre-Secondary School, Dabar, Fatehpur Sikri and recorded the evidence of school officials. From these documents which are admission register and the transfer certificate, it transpired that the date of birth of the petitioner recorded in the school is 2<sup>nd</sup> July, 1960.
19. Having minutely perused the inquiry report and the evidence led during the inquiry, we are of the opinion that the conclusions drawn by the learned Additional District and Sessions Judge that the actual date of birth of the accused petitioner is 2<sup>nd</sup> July, 1960 and the opinion of the Medical Board that estimation of age based on X-ray examination becomes uncertain after 25 years is apropos and deserves to be accepted.
20. Section 94(2) of the JJ Act provides for the mode of determination of age. In the order of priorities, the date of birth certificate from the school stands at the highest pedestal whereas ossification test has been kept at the last rung to be considered, only in the absence of the criteria Nos. 1 and 2, i.e. in absence of both certificate from school and birth certificate issued by a Corporation/Municipal Authority/Panchayat.
21. In the wake of above discussion, we find no merit in the writ petition which is dismissed as such.
22. Pending application(s), if any, shall stand disposed of.

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