RESILIENCE

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RLA

LATEST LEGAL NEWS

Supreme Court Suggests Meeting Between DCPCR & Ministry of Women & Child Development To Discuss 2021 Amendment To JJ Act

The Supreme Court on Friday suggested that a meeting be held between the Delhi Commission for Protection of Child Rights (DCPCR) and the Union Ministry of Women and Child Development so that a discussion could take place on the issue of 2021 amendments made to the Juvenile Justice (Care and Protection) Act 2015 (JJ Act). The Court was hearing a writ petition filed by the Delhi Commission for Protection of Child Rights (DCPCR) challenging the 2021amendments.

The JJ Act, which came into force on 1st September, 2022, made certain categories of offences against children non-cognizable. The matter, which was listed before a bench comprising CJI DY Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala is listed next for 25 July 2023.

The Commission is challenging the 2021 Amendment to the extent it made the following categories of offences non-cognizable :

A. Use of children for drugs peddling B. Use of children by terrorists C. Exploitation of child employee D. Cruelty against children

When the offences are cognizable, the police cannot register FIR and the investigation can commence only on the basis of a complaint filed before the concerned Magistrate. In 2021, the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 was passed to amend various provisions of the Juvenile Justice Act, 2015 which received the assent of the President on 07th August 2021. However, the Amendment Act is yet to be notified. There are 29 Amendments carried out in the Juvenile Justice (Care and Protection of Children) Act, 2015 by the Amendment Act, 2021.

Section 26 of the Amendment Act categorizes serious offences i.e. offences with imprisonment for a term of three years and above, but not more than seven years as non-cognizable. Such offence include sale and procurement of children, exploitation of child employee,employment of children for child begging, giving intoxicating liquor or narcotic drug to a child, etc.

The Commission argues that such categorization violates Article 14 and 21 of the Constitution of India and also various other international obligation under the United Nations Convention on the Rights of the Child to which India is a signatory. Further, such categorization is contrary to the scheme of the Juvenile Justice Act which is progressive in nature and protects children against all forms of exploitation.

It is argued that the categorization is also contrary to the general scheme of IPC wherein offences punishable with imprisonment for more than three years as non-cognizable. There is no reasonable justification or rational nexus sought to be achieved by reclassifying the cognizable offences as non-cognizable offences, the plea states.

It is mentioned that on 08.04.2022, five State Commissions for Protection of Child Rights representing the States and Union Territories of Chandigarh,Delhi, Punjab, Rajasthan and West Bengal in exercise of their powers vested under Section 15 of the Commissions for Protection of Child Rights Act, 2005 recommended to the Government of India that a Bill be tabled in the Parliament to further amend the Juvenile Justice Act, 2015in order to restore the cognizability status of the serious offences under the

Juvenile Justice Act, 2015. DCPCR says that no response has been received from the Central Government on the recommendations.

In this backdrop, the petition has been filed seeking a declaration that declaring the amendment to Section 86 of the Juvenile Justice (Care and Protection of Children) Act, 2015 by way of Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2021 as unconstitutional and violative of Articles 14 and 21 of the Constitution to the extent it makes offences under the Act which are punishable with imprisonment for a term of three years and above, but not more than seven years as non-cognizable.

12-Yr-Old Allegedly Used As 'Drug Carrier', Mother Moves Kerala High Court Seeking CBI Probe

A plea has been moved in the Kerala High Court by the mother of an eighth grade student, who had allegedly been used as a 'drug carrier', seeking CBIinvestigation into the issue pertaining to the luring of school children into drug consumption, and using them for drug trafficking and other crimes.As per the plea, the incident came to light when the twelve year old girl student was found in the school washroom in an inebriated stage with her uniform fully wet. When she was asked about the same by the Headmistress, Class Teacher and others, she allegedly informed that someone had made her smell a 'white powder', pursuant to which she had vomited four times. However, the incident was never informed to the police or the childline, petitionerclaims.

The petitioner alleges that it was on her questioning the child that the entire incident of the drug racket and their threats was revealed by her daughter. It was allegedly revealed that the child had been made completely addicted to drugs by other girl students of the school, and introduced tocertain outsiders in the racket. Thereafter, she was used for drug trafficking.When the involvement of the accused, Adhinan, was questioned by the police, pursuant to the petitioner's complaint, she avers that the police had colluded with him and recorded a false statement with a 'silly allegation' that the accused had touched the child's hand indecently.

The petitioner alleges that the child and her family are being witch hunted and ostracized in the matter, and that the said Adhinan is a politician belonging to DYFI, and his father is also an influential leader of IUML. She avers that her daughter was also being tortured by the teachers for reporting the crime. She claims that a news channel had also aired an interview of the petitioner's daughter and family in order to expose the collusion of state police with the drug mafia in this matter.
However, the petitioner is aggrieved by the manner in which the Chief Minister had allegedly made a statement 'exonerating' the accused during a debate in the Legislative Assembly, and had referred to the media reporting as 'fake'.

It is under these circumstances that the mother of the child has approached the High Court seeking the investigation in the case to be handed over tothe CBI. The plea has been moved through Advocates A. Rajasimhan, Vykhari K.U., and Sharafudheen M.K.

IBC | Application Under Section 12A For Withdrawal Of CIRP Is Maintainable Prior To Constitution Of CoC : Supreme Court

The Supreme Court has held that Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018, is binding upon the National

Company Law Tribunal (“NCLT”).

The Bench comprising of Justice B.R. Gavai and Justice Vikram Nath, while adjudicating an appeal filed in Abhishek Singh v Huhtamaki Ppl Ltd. & Anr.has held that Section 12A of the Insolvency and Bankruptcy Code, 2016 (“IBC”) does not debar entertaining applications for withdrawal of Corporate Insolvency Resolution Process (“CIRP”) even before constitution of the Committee of Creditors (“CoC”). Further, Regulation 30A of CIRP Regulations furthers the cause of Section 12A of IBC and they both are not conflicting provisions.

Manpasand Beverages Ltd. (“Corporate Debtor”) is engaged in the business of manufacturing and distribution of fruit beverages. Huhtamaki PPL Ltd. (“Operational Creditor”) used to supply packaging material to the Corporate Debtor.

The Operational Creditor filed a petition under Section 9 of IBC, seeking initiation of CIRP against the Corporate Debtor, over a default of Rs.1,31,00,825/-. The NCLT admitted the petition and initiated CIRP against the Corporate Debtor on 01.03.2021.

Two days after initiation of CIRP, when the Committee of Creditors (“CoC”) was not even constituted, the Parties entered into Settlement.As per Settlement terms, the Corporate Debtor was required to pay Rs. 95.72 Lakhs and the same was paid within 5 days.On 10.03.2021 the Interim Resolution Professional (“IRP”) of the Corporate Debtor filed an application before NCLT under Regulation 30A of the IBBI (IRP”) of the Corporate Debtor filed an application before NCLT under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 (“CIRP Regulations”), seeking withdrawal of CIRP against the Corporate Debtor. The Suspended Director (“Appellant”) of the Corporate Debtor also filed an application under Section 12A of IBC for withdrawal of CIRP.

In the meantime, the Corporate Debtor had filed an appeal before the National Company Law Appellate Tribunal (“NCLAT”) against the Order dated 01.03.2021, which was withdrawn, with liberty to revive the appeal in case the settlement failed. The NCLAT also stayed the formation of CoC till the NCLT decides the application under Section 12A of IBC. On 13.04.2021 the NCLT observed that during the pendency of the applicationas many as 35 creditors have filed their claims and withdrawal of proceedings would adversely affect their rights. Further, the Regulation 30A of CIRPRegulations was not binding upon NCLT and such provision would not be of any help to the Corporate Debtor or its Suspended Directors. Accordingly, the NCLT rejected the settlement application u/s 12A of IBC and fixed the matter for disposal of the application under Regulation 30A after hearing ahearing all creditors. The IRP constituted the CoC on 15.04.2021. In view of these developments, the Suspended Director of Corporate Debtor (“Appellant”) filed an appeal before the Supreme Court against the order dated 13.04.2021 of NCLT.

CURRENT AFFAIRS

1)Rajasthan Advocates Protection Bill, 2023

The Rajasthan Advocates Protection Bill, 2023, was tabled by the Rajasthan government in the state legislative assembly on March 16. The Bill aims to prevent offenses against advocates, such as assault, grievous hurt, criminal force, and criminal intimidation, along with damage or loss to their property. The Bill was introduced in response to the increasing ..

2) Supreme Court on Land Allotment for Lawyers' Chambers The Supreme Court on 2nd March 2023 witnessed a heated courtroom exchange between Chief Justice of India D.Y. Chandrachud and Supreme Court Bar Association president senior advocate Vikas Singh over allotment of land for lawyers' chambers. Chief Justice Chandrachud said the judges were not sitting idle and were battling with a large caseload. The CJI said the matter would be listed on April 17, but not as the first item on the case list for that day.

3) Panel set up by the Supreme Court for probing Adani's fraud allegations On 2nd March, India's Supreme Court set up an independent panel to investigate a US research firm's allegations of fraud against billionaire Gautam Adani's business empire. Hindenburg Research had accused Adani Group firms of stock manipulation and financial fraud in a report in January, sending its shares into a sharp fall. The Supreme Court appointed a five-member panel to investigate the allegations. The committee will be headed by former judge Abhay M Sapre and has been asked to give its report in two months.

4) Uttar Pradesh government exempted Electric Vehicles buyers in the state from tax, registration fees On March 5th, the Uttar Pradesh Government decided to exempt road tax and registration fees on the purchase of Electric Vehicles (EVs) for three years from the 14th of October, 2022 in its bid to promote electric vehicles. As per the Uttar Pradesh Electric Vehicle Manufacturing and Mobility Policy 2022, a 100 per cent tax exemption will be given on electric vehicles (EV) sold and registered in Uttar Pradesh from October 14, 2022, to October 13, 2025. The government will provide benefits for five years if the purchased electric vehicle is manufactured in the State itself.

5) Delhi High Court rejected the "Jain Shikanji" trademark plea On 2nd March, the trial court restrained a company run by one member of the 'Jain family' from using the trademark 'Jain Shikanji' for a masala-based lemon drink, while recognising the rights claimed by another member of the same family. The Delhi High Court Wednesday dismissed a plea against a trial court's interim order which restrained a company run by one member of the 'Jain family' from using the trademark 'Jain Shikanji' for a form of a lemon-based drink laced with masala while recognising the rights claimed by another member of the same family over the trademark.

6) India & World Bank signed loan agreement for the construction of Green National Highway Corridors Project in 4 States On March 16th, India and the World Bank signed a loan agreement for the construction of the Green National Highway Corridors Project in four States. These States are Himachal Pradesh and Andhra Pradesh. The agreement has been signed for the construction of 781 kilometres in these States, with loan assistance of 500 million dollars.

LATEST JUDGMENTS

Anwar @ Bhugra Vs. State of Haryana
2023 Latest Caselaw 279 SC

Citation : 2023 Latest Caselaw 279 SC
Judgement Date : ***29 Mar 2023***
Case No : Crl.A. No.-000973-000974 / 2011

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Anwar @ Bhugra Vs. State of Haryana

[Criminal Appeal Nos. 973-974 of 2011]

Rajesh Bindal, J.

1. The appellant convicted by the trial court and his conviction and sentence having been confirmed by the High Court under Sections 394 and 397 of the Indian Penal Code, 1860 as well as under Section 25 of the Arms Act, 1959, has filed the present appeals before this Court.

2. The facts as available on record are that FIR No. 104 dated 05.04.1994 was registered at P.S. Gharaunda, (Haryana) under Sections 394 and 397 of the Indian Penal Code, 1860 (for short 'the IPC'). On 04.04.1994, Jahid (PW-4), the complainant had come to village Barsat for purchasing grocery items from his village Rana Majra.

While he was returning to his village after purchasing the goods, he was apprehended by three persons near the cremation ground at about 8.00 P.M. They asked him to hand over whatsoever he had otherwise he would be eliminated. When Jahid (PW-4), the complainant, disclosed to them that he possessed only grocery items, two of them started giving him fist and leg blows. The accused were armed with drant, knife and pistol. The person who was having knife forcibly took his wrist watch.

3. In the meanwhile, a tractor came from side of village Barsat. Seeing the same, Jahid (PW-4), the complainant raised hue and cry for help. Harun Ali (PW-6) and Jain Singh (PW-5) were sitting on the tractor. They tried to catch hold of three persons. In the scuffle, the person who was having a drant gave a blow from its reverse side which struck Jahid (PW-4), the complainant, below his right eye.

Another blow struck his left shoulder. Jain Singh (PW-5) was also inflicted injuries with the drant. The person who was having knife inflicted injuries to Harun Ali (PW-6). His purse containing ₹20/- and an identity card were taken away. Other person took away purse from the pocket of Jain Singh (PW-5) containing ₹15/-.

In the meantime, Mahinder Singh a resident of village Balehra came on the spot and on seeing those three persons tried to run away, but one of them who was armed with a knife was apprehended. He disclosed his name as Satpal son of Radhu Ram, resident of village Sadarpur. He also disclosed the names of other accused persons i.e Anwar @ Bhugra, son of Manga Ram resident of Mundi Garhi having pistol and Bablu @ Om Prakash, son of Ram Singh, resident of Baroli having drant.

4. Taking advantage of the darkness even Satpal ran away from the spot. This was the basis of the FIR. Accused were apprehended on 12.04.1994 and recoveries were made. A country made pistol of .12 bore was recovered from the possession of the appellant, following which FIR No. 111 of 1994 was registered at P.S. Gharunda, (Haryana) u/s 25 of the Arms Act, 1959.

5. The prosecution produced eight witnesses in support of the case in FIR No.104 of 1994. After trail, the learned Additional Sessions Judge, Karnal convicted Anwar@ Bhugra, son of Manga Ram, Satpal son of Radhu and Om Parkash @ Bablu, son of Ram Singh u/s 394 and 397 IPC and sentenced them to undergo imprisonment for a period of seven years along with fine of ₹2,000/-.

In default for payment of fine, imprisonment of 1-3/4 years was provided. In FIR No.111 of 1994, the trial court convicted the appellant under Section 25 of the Arms Act, 1959 and ordered to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 500/-. In appeal, by a common judgment, conviction and sentence awarded by the trial court in both the cases was upheld.

6. The argument raised by the learned counsel for the appellant is that the story built by the prosecution on the basis of the complaint is concocted. In fact, no such incident had taken place. It is alleged that the appellant was carrying pistol, however there is nothing either in the complaint or in the evidence brought on record that the same was ever used. Recovery of the pistol itself is in doubt as the memo of the personal search after the arrest of the appellant mentions that nothing was found at the time of his personal search.

In the recovery memo of the pistol, it is mentioned that during the course of investigation the appellant was arrested and at the time of arrest his personal search was carried out and from the left pocket of his pyjama, one country made pistol (Cutta) of .12 bore and from his right pocket three live cartridges were recovered. This itself was contrary to the memo of personal search. The recovery of the purse was also seriously doubtful as in the FIR there is no allegation that purse was taken by the appellant.

7. Further, there are serious defects and anomalies in the deposition of the complainant/ Jahid (PW-4). Jain Singh (PW-5), who was stated to be a person sitting on the tractor on which he reached the place of incident, did not support the prosecution version.

In his statement recorded for the case under the Arms Act, Jain Singh denied recovery of any weapon of offence in his presence. He was declared hostile. Even in his cross-examination, he denied recovery of any weapon as he stated that his signatures were got on certain blank papers by the police. Similar was the position in the statement of Harun Ali (PW-6) who also did not support the prosecution version. He was declared hostile and cross-examined by the prosecution.

8. On the other hand, learned counsel for the State submitted that the entire prosecution version has been duly supported by the witnesses. Merely because some of them were won over and had to be declared hostile will not demolish the case of the prosecution. There is concurrent finding of facts recorded by the courts below and it does not call for interference by this Court.

9. Heard learned counsel for the parties and perused relevant referred record. As per the version given by the complainant, the case sought to be made out is under Sections 394 and 397 IPC as the complainant was waylaid. The incident is stated to have taken place at 8.00 P.M on 04.04.1994. The appellant, as per the version of the complainant and the official witness, was carrying a pistol with him, however, there is nothing on record either in the form of statements of the witnesses or even the medical report that the pistol was ever used.

Further, the recovery of pistol from the appellant is also seriously doubtful. As per the memo prepared at the time of his personal search, it is mentioned that nothing was recovered from him. However, in the memo of possession regarding the pistol, it is stated that during the course of the investigation, the appellant was arrested and his personal search was carried out and from the left side pocket of his pyjama country- made pistol was recovered.

It is strange to note that the appellant will continue to carry the pistol in his pocket days after the incident and will be arrested along with that. The two versions of the prosecution namely the memo of his personal search and the memo of possession of country made pistol demolish the case of the prosecution.

10. Two witnesses, namely, Jain Singh (PW-5) and Harun Ali (PW-6) who, according to the complainant and the prosecution, had reached the scene of crime on a tractor, did not support the prosecution version, neither for the scene of crime nor for the recoveries. Jain Singh (PW-5) in his statement states that it was Bablu who snatched his purse which contained ₹15. Harun Ali (PW- 6) turned hostile. No allegations were made against the appellant. The presence of the appellant at the crime site becomes highly doubtful.

11. There was improvement in the statement of Jahid (PW-4), the complainant, which makes the case of the prosecution doubtful. In the FIR, he stated that there were two persons on the tractor namely Jain Singh and Harun Ali. However, in his statement before the court, he said that a child was driving the tractor and two persons were sitting on that. All the three came down for his help.

12. Moreover, there are major discrepancies in the FIR and the evidence of Jahid, the complainant (PW-4). In the FIR, he states that the person holding Drant (Bablu) forcibly took away the purse from the right side pocket of Harun Ali (PW-6) which was containing his identity card and ₹ 20 and the other person (none specified) took away the purse of Jain Singh (PW-5) from his pocket which had ₹15 and tobacco. However, in his evidence he states that Bablu snatched his purse and Anwar, the appellant, snatched the purse from Harun Ali (PW-6).

13. Mahinder Singh who is named in the FIR and on whose arrival at the scene of crime the accused ran away, has not been produced by the prosecution. He was the material witness.

14. From the aforesaid material on record, the presence of the appellant at the scene of crime and recovery of pistol from him becomes highly doubtful and the guilt of the appellant having not been proved beyond reasonable doubt, conviction and sentence cannot be upheld.

15. Accordingly, the appeals are allowed. The judgment and order passed by the High Court and the Trial Court as regards the appellant are set aside.

Bail Bonds submitted by him stand cancelled.

........................J. [Abhay S. Oka]

Shiva Kumar @ Shiva @ Shivamurthy Vs. State of Karnataka 2023 Latest Caselaw 273 SC

Citation : 2023 Latest Caselaw 273 SC
Judgement Date : ***28 Mar 2023***
Case No : C.A. No.-007188-007188 / 2013

Shiva Kumar @ Shiva @ Shivamurthy Vs. State of Karnataka

[Criminal Appeal No. 942 of 2023 arising out of SLP (Crl.) No. 3400 of 2017]

Abhay S. Oka, J.

1. Heard learned counsel for the parties.

Factual Aspects

2. The appellant has been convicted for the offences punishable under Sections 366, 376 and 302 of the Indian Penal Code, 1860 (for short, 'IPC'). The controversy is limited to the sentence for the offence

punishable under Section 302 of the IPC. The learned Sessions Judge (FastTrack Court) sentenced the appellant to undergo rigorous imprisonment for the rest of his life.

The appellant preferred an appeal before the High Court to challenge the conviction and sentence. The State Government preferred an appeal for enhancement of the sentence. The High Court, by the impugned judgment, dismissed both appeals. On 21st April 2017, notice was issued by this Court only on sentence.

Submissions

3. The learned counsel appearing for the appellantaccused submitted that in view of the law laid down by the Constitution Bench of this Court in the case of Union of India v. V. Sriharan alias Murugan & Ors.1, a modified sentence can be imposed only by the Constitutional Courts and not by the Sessions Courts. He submitted that the Constitutional Courts can grant life sentence either for the entirety of life or for a specific period, only while commuting the death penalty imposed on an accused.

If the death penalty is not imposed, the Courts are powerless to impose a modified sentence. He also relied upon a decision of this Court in the case of Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka2. He invited our attention to paragraph 105 of the decision of the Constitution Bench in the case of V. Sriharan1, wherein this Court has laid down that a modified sentence can be an alternative only to the death penalty. He, therefore, submitted that the Constitution Bench held that a fixedterm sentence or modified sentence can be imposed by way of substitution for the death penalty.

4. He submitted that even the subsequent decisions of this Court show that imposition of a modified sentence was made only in the cases where the death penalty has been commuted. He relied upon the decision of this Court in the case of Sahib Hussain alias Sahib Jan v. State of Rajasthan3 and in the case of Gurvail Singh alias Gala v. State of Punjab4.

5. On facts, he pointed out that at the time of the commission of the offence, the appellant's age was 22 years. He pointed out that the appellant has a young wife, a small child and aged parents. Moreover, he has no antecedents and poses no threat to society. Moreover, his conduct in jail is all throughout satisfactory and in fact, he has completed B.A. degree course while in jail. Lastly, he pointed out that the appellant has undergone sentence for approximately seventeen years and two months.

6. The submission of the learned counsel appearing for the respondent - State is that the Constitutional Courts are not powerless to impose modified sentences considering the gravity of the offence, the conduct of the accused and other relevant factors even though the death penalty has not been imposed.

He submitted that the power of the Constitutional Courts to grant a modified sentence could not be circumscribed by holding that the said power can be exercised only when the question is of commuting the death sentence. By pointing out findings of the Trial Court and the High Court, he submitted that in the facts of this case, the most stringent punishment was contemplated. He submitted that in any case, the High Court, after considering all the factual aspects, has reiterated the view taken by the Sessions Court by imposing a sentence for the entirety of the appellant's life.

Our View

7. Under Chapter III of the IPC, different punishments have been provided. Section 53 provides for five categories of punishments: the death penalty, imprisonment for life, imprisonment (either rigorous or simple), forfeiture of property and fine. It is also a settled position that when an offender is sentenced to undergo imprisonment for life, the incarceration can continue till the end of the life of the accused.

However, it is subject to a grant of remission under the provisions of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and the Constitutional powers vested in the Hon'ble Governor and the Hon'ble President of India, as the case may be. While imposing a life sentence, if it is directed that the accused

shall not be released for a specific period, it becomes a modified punishment. In such a case, before the expiry of the fixed period provided, the power to grant remission under Cr.P.C. cannot be exercised.

8. The learned counsel appearing for the appellant has relied upon what is held in paragraph 56 of the decision of this Court in the case of Swamy Shraddananda2, which reads thus:

"56. But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 2831994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration.

This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court.

This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States. A suggestion to this effect was made by this Court nearly thirty years ago in Dalbir Singh v. State of Punjab [(1979) 3 SCC 745 : 1979 SCC (Cri) 848] . In para 14 of the judgment this Court held and observed as follows: (SCC p. 753)

"14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case [Rajendra Prasad v. State of U.P., (1979) 3 SCC 646: 1979 SCC (Cri) 749]. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men's life but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large.

This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder." We think that it is time that the course suggested in Dalbir Singh [(1979) 3 SCC 745 :1979 SCC (Cri) 848] should receive a formal recognition by the Court."

(emphasis added)

9. In the case of V. Sriharan1, the Constitution Bench was dealing with the question which is quoted in paragraph 50, which reads thus:

"50. Having thus noted the relevant provisions in the Constitution, the Penal Code, the Criminal Procedure Code and the DSPE Act, we wish to deal with the questions referred for our consideration in seriatim. The first question framed for the consideration of the Constitution Bench reads as under : (V. Sriharan case [Union of India v. V. Sriharan, (2014) 11 SCC 1 : (2014) 3 SCC (Cri) 1] , SCC p. 19, para 52)

"52.1. Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113], a

special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?"

10. While answering the question, the Constitution Bench (majority view) held that imprisonment for life in terms of Section 53 read with Section 45 of the IPC means imprisonment for the rest of the life of the convict. In such a case, right to claim remission, commutation etc. in accordance with law will always be available. Thereafter, in paragraph 105, the Constitution Bench held thus:

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

(emphasis added)

11. What is held by the Constitution Bench, cannot be construed in a narrow perspective. The Constitution Bench has held that there is a power which can be derived from the IPC to impose a fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other Court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

12. In a given case, while passing an order of conviction for an offence which is punishable with death penalty, the Trial Court may come to a conclusion that the case is not a 'rarest of the rare' case. In such a situation, depending upon the punishment prescribed for the offence committed, the Trial Court can impose other punishment specifically provided in Section 53 of the IPC.

However, when a Constitutional Court finds that though a case is not falling in the category of 'rarest of the rare' case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixedterm sentence so that the benefit of statutory remission, etc. is not available to the accused. The majority view in the case of V. Sriharan1 cannot be construed to mean that such a power cannot be exercised by the Constitutional Courts unless the question is of commuting the death sentence. This conclusion is well supported by what the Constitution Bench held in paragraph 104 of its decision, which reads thus:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court.

By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

13. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixedterm sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433A of Cr.P.C.

14. Now, we come to the facts of the case. The facts are such, which will shock the conscience of any Court. The deceased woman, who was happily married, worked in a prominent company having an office at Electronic City, Bengaluru. Considering the nature of her duty, she had to work till late night or even till early in the morning. The company used to provide her conveyance in the form of a car. The company used to provide cars to employees on different designated routes.

On the fateful day, the deceased left the office at 2:00 a.m. in a vehicle provided by the company. She used to take a vehicle plying on route no.131. On that day, she was informed by the appellant, who was the driver, that the vehicle operating on route no.131 was not available. The appellant told her that she will have to travel by his vehicle operating on route no.405. The deceased, accordingly, sat in the car driven by the accused. The maternal uncle of the deceased lodged a complaint by stating that the deceased was missing. Ultimately, her dead body was recovered at the instance of the appellant.

The clothes on the person of the deceased, footwear, etc. were found near the dead body. The prosecution successfully established the charge of the offence of rape, punishable under Section 376 of the IPC as well as the offence under Section 366 of IPC. The appellant-accused was also convicted for the offence under Section 302. The life of the victim was cut short in this brutal manner at the age of 28 years.

15. In many leading cities, IT hubs have been established. In fact, Bengaluru is known as the Silicon Valley of India. Some of these companies have customers abroad and that is why the company staff members work at night. A large number of staff members in such companies are women. The issue is of safety and security of women working with such companies. We have perused the judgment of the Trial Court. It is true that the Trial Court could not have directed that the appellant shall not be released till the rest of his life.

The Trial Court noted the fact that on the date of conviction, the age of the appellant was 27 years and he had a wife and small child as well as aged parents. Considering these factors along with the fact that this was the first offence committed by the appellant, the Trial Court found that the case was not falling in the category of the 'rarest of the rare' cases. We must hasten to add that the fact that the accused has no antecedents, is no consideration by itself for deciding whether the accused will fall in the category of the 'rarest of the rare' cases. It all depends on several factors. The State Government failed in its endeavour to get capital punishment by way of filing an appeal.

16. This is one case where a Constitutional Court must exercise the power of imposing a special category of modified punishment. The High Court expressed the view that the punishment imposed by the Trial Court was justified after considering the balance sheet of aggravating and mitigating circumstances. It is the duty of the Court to consider all attending circumstances.

The Court, while considering the possibility of reformation of the accused, must note that showing undue leniency in such a brutal case will adversely affect the public confidence in the efficacy of the legal system. The Court must consider the rights of the victim as well. After having considered these circumstances, we are of the opinion that this is a case where a fixedterm sentence for a period of thirty years must be imposed.

17. Accordingly, we modify the order of sentence of the Trial Court for the offence punishable under Section 302 of the IPC. We direct that the appellant shall undergo imprisonment for life. We also direct that the appellant shall be released only after he completes thirty years of actual sentence.

The appeal is partly allowed to the above extent.

.......................J. (Abhay S. Oka)

.......................J. (Rajesh Bindal)

New Delhi;

March 28, 2023.

1 2016 (7) SCC 1

2 2008 (13) SCC 767

3 2013 (9) SCC 778

4 2013 (10) SCC 631

Narayan Chetanram Chaudhary Vs. State of Maharashtra 2023 Latest Caselaw 267 SC

Citation : 2023 Latest Caselaw 267 SC
Judgement Date : ***27 Mar 2023***
Case No : R.P.(Crl.) No.-001139-001140 / 2000

Narayan Chetanram Chaudhary Vs. State of Maharashtra

[Criminal Miscellaneous Petition No. 157334 of 2018]

[Review Petition (Criminal) Nos. 11391140 of 2000]

[Criminal Appeal Nos. 2526 of 2000]

Aniruddha Bose, J.

1. This is an application under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("2015 Act") requesting this Court to hold that the applicant, who is a convict for committing offences under Sections 302, 342, 397, 449 read with 120B and 34 of the Indian Penal Code, 1860 ("1860 Code") was a juvenile on the date of commission of the offence. Simultaneous prayer of the applicant is for his release from custody on the ground of having served more than the maximum punishment permissible under the Act.

The applicant has been sentenced to death by the Additional Sessions Judge, Pune by a judgment and order dated 19th February 1998 and 23rd February 1998 respectively. This application has been taken out in connection with a petition for review of the order by which his conviction and sentence was sustained by this Court after confirmation by the High Court. The review petition of the applicant was also dismissed on 24th November 2000. The applicant, along with two other offenders (Jitu and Raju) were tried for commission of offences under the aforesaid provisions of the 1860 Code.

The applicant had not raised the plea of juvenility at the trial or the appellate stage. In the Trial Court, said Raju had turned approver and was tendered pardon. Both the judgment of conviction and order of

sentence were confirmed by the High Court on 22nd July 1999 in the appeal of the applicant as also in the confirmation proceeding. The appeal against the judgment of conviction and order of death sentence made by the applicant was dismissed by this Court on 5th September 2000.

The offence of the applicant is no doubt, gruesome in nature. On 26th August 1994, as per the prosecution case sustained by all the judicial fora including this Court, the applicant alongwith the two other accomplices had committed murder of five women, (one of whom was pregnant) and two children. The offence took place at Pune in the State of Maharashtra. The applicant was arrested on 5th September 1994 from his home village and is in detention for more than 28 years.

2. Though the offence was committed at Pune, the applicant claims to hail from Jalabsar, in Shri Dungargarh tehsil, at present in Bikaner district, Rajasthan. It is from there he was arrested. He was tried as Narayan Chetanram Chaudhary. His plea before us is that his actual name is Niranaram. In the Inquiry Report, which we shall deal with later in this judgment, there is observation to the effect that people in Pune, Maharashtra might find it difficult to pronounce Niranaram and there is possibility of pronunciation mistake to call "Niranaram" as "Narayan" in Pune.

The said tehsil was earlier in the district of Churu but in the year 2001, it came within the Bikaner district. Date of occurrence of the offence is 26th August 1994 and the chargesheet submitted against the applicant showed his age to be about 20 years at the time of commission of the offence. The applicant's claim of juvenility is primarily based on a "certificate" of date of birth issued on 30th January 2019, in the name of Niranaram, son of Chetanram.

The said certificate has been issued by the Pradhanacharya (Headmaster), Rajakiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar, Shri Dungargarh. In the said document, it is recorded that Niranaram was born on 1st February 1982. In a "transfer certificate" by the same authority issued on 15th August 2001, it is reflected that he had joined the school in Class First on 1st April 1986 vide admission number 568 and left from Class Third (Passed) on 15th May 1989.

By the date of birth reflected in these certificates, the age of the applicant on the date of commission of offence would have been 12 years and 6 months. The applicant, as we have already indicated, was tried as Narayan, not Niranaram. Moreover, in certain other documents Niranaram's age is shown to be different from that reflected in the said certificates. The variations or discrepancies as regards the name of applicant and his age are the factors we shall be dealing with in this judgment and we shall dwell into these aspects in subsequent paragraphs of this judgment.

3. In the chargesheet, the accused Narayan's age was shown to be 20 years. We find from the judgment of the High Court that the said age (2022 years) was given on behalf of the applicant only at the time of hearing. The High Court had tangentially referred to the question of age of the applicant in its judgment in the appeal and death reference. At that time, however, the plea of juvenility was not there. It was observed in the High Court's judgment that the age of the accused at the time of occurrence ought to be borne in mind while considering the question of awarding the sentence.

4. The applicant for the first time wanted a medical examination for determination of his age on 14th August 2005, when the Prison Inspector General, Western Division, Pune went to meet the applicant at Yerawada Central Prison. A request was made thereafter by the prison authorities to the Chief Medical Officer and the applicant was taken to Department of Forensic Science, BJ Medical College and Sassoon General Hospital, Pune. The age determination report by the Department of Forensic Medicine, of the said institution states that on 24th August 2005, age of the patient was more than 22 years but less than 40 years including margin of error. The said report reads:

"MD/ AGE/ 198/ 2005
Department of Forensic Science
B J Medical College and Sassoon
General Hospital, Pune

Proforma for age examination

24/8/2005

Mr. Narayan Chetram Chaudhary

Brought by Yerawada Central Prison, Pune

Date: 24/8/2005, time: 3:45 pm, MLC No 25802, date: 23/8/2005

Consent: The doctors have given me an idea of the tests involved in determination of age. I am ready for the examination of my own free will.

(unclear 3 line)

Physical Development: Medium Teeth: Upper 15

Lower 15 Ht 5'9" Wt 68 kg

Secondary Sex Characters

Male:
Moustache: Present
Beard: Shaved
Pubic Hair: Present
Voice: normal
Genitals: normal
Medicolegal exam: X Ray plate no R180(4) date: 23/8/05

(unclear medical description)

Conclusion: From clinical & radiological examination the age of the patient on date 24/8/05 'more than twenty two years but less than forty years (40 years)' including margin of error.
Signed in the presence of:
Sd/-
B G More

Sd/-
Dr. M.S. Vable
Prof. & Head / Assec. Prof. / Asstt. Lect.
Department of Forensic Medicine,
B. J. Medical College, Pune - 411001"

(quoted verbatim from the paperbook)

5. It was in the early part of 2006, we are apprised by Mr. Basant, learned senior counsel representing the applicant, that his cause was taken up by certain human rights groups. Some public spirited individuals espousing the applicant's cause on the point of juvenility had written to the President of India on 24th January 2006 requesting cancellation of award of death penalty on the ground that he was a juvenile at the time of commission of the offence. A copy of the said communication, captioned "Mercy Petition", has been annexed as A7 to the application. The text of this petition is reproduced below:

"President's Secretariat
CA II Section
Date24/ 1/2006
Dy. No. 03/ 06 M.P.

Mercy Petition on behalf of a juvenile to the President

Hon. Excellency
The Hon. President of India,
Rashtrapati Bhavan, New Delhi

To his Excellency, the President of the Republic of India We are an organization Human Rights and Law Defenders (HRLD) working on different issues on Human Rights violations. We also work in the Yerawada Central Prison, Pune and provide free legal aid to the prisoners in peril.

It is due to the extremity of the matter before us that weÂ·take the liberty of corresponding with your Hon. Self to make you aware that one person names Niranaram Chetanram Chaudhary, born on 1/2/1982, who has been awarded the death penalty in a murder case in languishing in the Yerawada Central Prison, Pune. Therefore, this applicant was around 13 years of age at the time of committing this offence. Your Excellency, your office has received a mercy petition from his coaccused Jitendra Nainsingh Gehlot DY no 7/27 on 8/11/2004.

You are indeed suitably in receipt of all the relevant case material which has been earlier sent to you office. The prison authorities have also requested us that we should attract your attention to the fact that Niranaram Chetanram Chaudhary was a juvenile at the time of offence so that death penalty awarded is a mistake of the law.

It should also be well noted that there are various judgement given by the High Court and the Apex Court and numerous and substantive laws to confirm that if any person had been a juvenile at the time of committing the offence, it can be a strong ground for consideration at any stage of the case. He has already spent more than 11 years languishing inside the four walls of the prison.

We would like to bring to light the miscarriage of justice in this case where in a 13 year old juvenile who committed an offence has become a grown up man inside the prison meant for major and hardened criminals. So we want to request you to consider this sensitive matter of a juvenile in conflict with law and ask your august office and Honourable self to cancel the punishment of death penalty awarded to the juvenile in this case.

Yours truly
Adv. Asim Sarode Adv. Smita Lokhande Jagriti Sanjay

Jadhav Mohat

Human Rights Activist Legal Aid Lawyer Student Intern Social Worker Enclosures: Transfer certificate of Niranaram Chetanram Chaudhari and other papers with respect to his proof of age. (All attested copies)"

(quoted verbatim from the paperbook)

6. That letter, as pleaded in this application, was forwarded to the Government of Maharashtra eliciting the State Government's comments on such claim of juvenility. There were subsequent exchange of communications among the officials on the question of his age determination.

In a letter originating from the Superintendent, Yerawada Central Jail, Pune addressed to Additional Secretary, Home Department, Maharashtra (which is Annexure A13 to the present application), the Jail authorities recorded that the Medical Superintendent, Sassoon hospital, Pune was intimated by the applicant that he had studied in a Government School at Jalabsar and his name in the school was Niranaram. It was in this communication dated 19th January 2007 a reference was made to his name being Niranaram. It does not appear, however, that any further age determination test was carried out. The said communication reads:

"With reference to the above subject, orders were given to present a medical report regarding the current age of the condemned prisoner C1871 Narayan Chetanram Chaudhari. Accordingly, the said prisoner was sent to the Hon Medical Superintendent, Sassoon Hospital, Pune and the he was requested through letter NV1/ AVT/ 64/ 2007 date 8/1/2000 to give a medical report about the age of the prisoner.

In his letter no SSR/ Prisoner/ 26/ 06 date 8/1/2007 about the age of the prisoner, the Hon. Medical Superintendent noted that, "after speaking to the prisoner, it appears that his actual age can be found out through his school records. His name in school was Niranaram Chetanram Chaudhari and he has studied in the Government School in Julabsar until grade 3. The village is in Dungargadh Taluka, earlier Churu District, now Bikaner District.

If you obtain a certificate from that school it could be useful." We have attached a photocopy of the said letter. Similarly, photocopies of the prisoner's earlier mercy petition submitted by his lawyer Mr. Aseem Sarode along with his school certificate are also attached. Photocopy of the school certificate submitted by the prisoner is being attached. Presented for information and further action."

(quoted verbatim from paperbook)

7. Thereafter, a writ petition was filed in this Court under Article 32 of the Constitution of India by the applicant representing himself as 'Narayan @ Niranaram' seeking quashing of the order of punishment imposed upon him on the ground of him being a juvenile on the date of commission of offence.

In this petition, apart from the aforesaid certificates, the applicant had relied on a "Family Card" of the Rajasthan Government issued in 1989, recording the age of Nirana to be of 12 years as also the aforesaid Transfer Certificate issued on 15th August 2001 recording Niranaram's date of birth as 1st February 1982. In both these documents, Chetanram's name appears as father of Niranaram. This writ petition, registered as W.P. (Criminal) No. 126 of 2013, was dismissed by a twoJudge Bench of this Court on 12th August 2013 with the following order:-

"UPON hearing counsel the Court made the following

ORDER

"We are not inclined to entertain this Writ Petition under Article 32 of the Constitution of India and the same is dismissed."

8. This application was instituted on 30th October 2018. When it was taken up for hearing, a Coordinate Bench by an order passed on 29th January 2019 had referred the matter to the Principal District and Sessions Judge, Pune to decide the juvenility of the applicant keeping in view the provisions of Section 9(2) of the 2015 Act. This order reads:-

"UPON hearing the counsel the Court made the following

ORDER

Heard learned counsel for the parties.

The applicant Narayan Chetanram Chaudhary has filed an application (Crl.M.P.No.5242 of 2016 in R.P.(Crl.)Nos.11391140/ 2000 in Crl.A.Nos.2526/ 2000) seeking review of the final judgment of this Court dated 05.09.2000 in Criminal Appeal Nos.2526 of 2000, upholding his conviction under Sections 342, 397, 449 and 302 of the Indian Penal Code (hereinafter referred to as the `IPC') and the sentence of death awarded to him under Section 302 IPC by reopening the Review Petition(Crl.)Nos.11391140 of 2000, which were dismissed by this Court on 24.11.2000.

The applicant has also filed an application (Crl.M.P.No.157334 of 2018 in R.P. (Crl.)Nos.11391140/ 2000 in Crl.A.Nos.2526/ 2000) under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act,

2015 (hereinafter referred to as 'the Act') seeking a declaration that he was a juvenile at the time of commission of offence. The applicant has placed certain additional documents to prove his juvenility at the time of commission of offence.

On 31.10.2018, when the matter came up before this Court for hearing, the counsel for the State was directed to take instructions on the additional documents on the question of juvenility of the applicant. However today, the learned counsel for the respondentState submits that he has not got any instructions in that regard so far. The instant case reflects gross lethargic and negligent attitude of the State. In view of the pendency of the matter, we are restrained from observing anything further.

Keeping in view Section 9(2) of the Act, we have no other option but to refer the matter to the Principal District and Sessions Judge, Pune, to decide the juvenility of the applicant. Accordingly, we direct the Registry of this Court to send the application (Crl.M.P.No.157334/2018 in R.P.(Crl.) Nos.1139- 1140/2000 in Crl.A.Nos.2526/ 2000) along with xerox copy of the documents, relied upon by the applicant, to the Principal District and Sessions Judge, Pune to decide the juvenility of the applicant.

If notice is given to the applicant, he is directed to produce all the original documents before the concerned Court in support of his claim of juvenility at the time of commission of offence. The Principal District and Sessions Judge, Pune is directed to send a report to this Court, preferably within a period of six weeks. We hope and trust that the Principal District and Sessions Judge, Pune shall decide the juvenility of the applicant within the time stipulated hereinabove.

List the matter immediately after receipt of report from the Principal District and Sessions Judge, Pune."

9. In pursuance of direction of this Court, the Principal District and Sessions Judge (we shall henceforth refer to him as the "Inquiring Judge") gave his report sustaining the applicant's claim for juvenility. The defacto complainant, a family member of the victims has filed an application for intervention.

That application is registered as I.A. No. 58515 of 2019. We allow this application. Mr. Basant, has argued in support of this finding, whereas Mr. Patil and Mr. Chitaley, learned counsel for the State and the intervenor (defacto complainant) respectively have asked for rejection of the report and dismissal of the application. In his report, the Inquiring Judge had examined the following documents:

"1. A Transfer Certificate dated 15/08/2001, issued by Rajkiya Adarsh Uccha Madhyamik Vidylaya, Jalabsar Shiksha Vibhag, Rajasthan in the name of Niranaram s/o Chetanram, resident of Jalabsar, District Churu, showing the date of birth to be 01/02/1982. (Annexure' I1' in his report).

2. The Certificate of Date of Birth of Niranaram s/o Chetanram, dated 30/01/2019, issued by the Headmaster, Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar, Shridungargarh (Bikaner). (Annexure' I2' in his report).

3. A copy of School Register issued by Headmaster, Rajkiya Adarsh Uccha Madhaymik Vidyalaya, Jalabsar, Shridungargarh, (Bikaner), dated 07/02/2019. (Annexure' I3' in his report).

4. A Certificate of Bonafide resident dated 10/08/2009, issued by the Tahasildar, Shridungargarh, Bikaner in the name of Niranaram s/o Chetanram, resident of Jalabsar, TahasilShridungargarh, DistrictBikaner. (Annexure' I4' in his report).

5. A Certificate of Other Backward Class, issued by the Tahasildar Shri dungargarh, Bikaner, dated 10/08/2009, in the name of Niranaram s/o Chetanram, resident of Jalabsar, DistrictBikaner. (Annexure' I5' in his report).

6. A copy of Notification dated 23/03/2001 issued by the State of Rajasthan, regarding inclusion of Tahasil has Dungargarh in District Bikaner with effect from 01/04/2001, by removing the same from District Churu. (Annexure' I6' in his report).

7. A certificate issued by the Sarpanch, Grampanchayat Udrasar, Shridungargarh, certifying that, Narayan Chaudhary is the same person whose another name is Niranaram s/o Chetanram Chaudhary. (Annexure' I7' in his report).

8. The Rajasthan Government Pariwar Card No.21711 issued in the name of Chetanram s/o Ratnaram in the year 1989 showing age of 'Nirana' as son of Chetanram to be of 12 years. Further, showing Anada, Mukhram, Birbal to be the brothers of 'Nirana'. (Annexure' L1' in his report).

9. A T.C. Form issued by Rajkiya Madhyamik Vidyalaya Udrasar, TahasilShridungargarh, DistrictBikaner, dated 19/09/2003, in the name of Anadaram s/o Chetanram Sanatan. (Annexure' L2' in his report).

10. A Transfer Certificate, dated 15/07 /1994 in the name of Mukhram s/o Chetanram issued by Rajkiya G. R. Mohata Uccha Madhyamik Vidyalaya, Shridungargarh, Bikaner. (Annexure' L3' in his report).

11. A photocopy of Proforma for verification of age examination, dated 24/08/2005 regarding Narayan Chetaram Chaudhary. (Annexure' J1' in his report)" (quoted verbatim from the paperbook)

10. The reasoning and the finding of the Inquiring Judge in his report of 12th March 2019 were in the following terms:

"38) So far as the inquiry directed to be conducted by this Court is concerned, at the outset, the relevant provisions of law with regard to the inquiry as to juvenility has to be mentioned for reference. The provisions under the Act have been mentioned above.

39) As per section 2(35) of the Act, Juvenile means a child below the age of 18 years. The authorities referred above, specifically referring to retrospectivity as to consideration of the application of present law to the fact of juvenility is concerned, there cannot be any dispute about it. Hence, Section 9(2) of the Act is a relevant provision on the basis of which the petitioner has filed a petition before the Hon'ble Supreme Court of India for declaration that he was a child under the Act. The said provision is reproduced above.

In the case of "Raju vsState of Haryana [(2019) 14 SCC 401] " there is a reference to Rule 7 A of the Juvenile Justice (Care and Protection of Children) Rules 2007. The said rule deals with making of inquiry by the Court in the claim of juvenility. SubRule 3 of Rule 12 of the said Rules has stated about the procedure to be followed for age determination. After the Juvenile Justice (Care and Protection of Children) Act, 2015 came into force, the relevant provision relating to the procedure to be followed is U/sec.9 of the Act. Similarly, section 94 of the Act deals with presumption and determination of age. For ready reference, all these provisions have been reproduced above.

40) The authorities of "Surendra Kumar vsState of Rajasthan [(2008) SCC OnLine Raj 138]" and "Shah Nawaz vsState of Uttar Pradesh and Another [(2011) 13 SCC 751]" are relevant with reference to the school record. Similarly, the authority of "Surendra Kumar (supra)" is useful regarding entry in electoral roll. The authority of "Darga Ram alias Gunga vsState of Rajsthan [(2015) 2 SCC 775]" is useful regarding ossification test. All these cases have to be considered with reference to the case of "Raju (supra)" and the provisions of law noted above.

41) As per the provision in section 94 above, in case of doubt regarding whether a person is child or not the process of age determination shall be undertaken and evidence shall be sought to obtain the date of birth certificate from the school or matriculation or equivalent certificate from concerned examination board, if available. The certificate given by Corporation, Municipal Authority or Panchayat can also be obtained and in the absence thereof, age can be determined by ossification test.

42) Therefore, if Rule 7 A of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is read with it's Rule 12 and the present Section 9 and Section 94 of the Act, it is clear that, the date of birth from the school certificate or matriculation certificate or a certificate of Corporation etc. is relevant consideration. Thus, preference has to be given to the School Certificates. Even in the case of "Raju

(supra)" the Hon'ble Supreme Court of India made it abundantly clear that the school certificate would be relevant for the name as well as date of birth.

43) In view of the above provisions of law, and the authorities placed on record, I proceed to examine the documents to see whether the documents relied on by the petitioner are genuine and authentic and whether those can be relied on to decide juvenility. The submissions made by learned DGP and learned advocate for the petitioner will be looked into simultaneously.

44) The Police Officer had visited the Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar. He has recorded statement of the Incharge Head Master Namrata Prabhusing with reference to the document at serial no.1 (Annexure' I1'). The said document admittedly, is in the name of "Niranaram s/o Chetanram". She has stated that, the said document was issued by her school on the basis of the register kept in the school. She also certified that, the admission no. 568 is correct as per the register maintained.

The copy of register, which is the document at serial no. 3 (Annexure' I3') was also found by the Police Officer to be the correct copy of the register kept by the school. The name of "Niranaram s/o Chetanram" can be seen in such register. As per such register, the date of birth of "Niranaram" is 01/02/1982. Even as per document no.1, the date of birth of "Niranaram" is 01/02/1982. With regard to document at serial no.2 (Annexure' I2'), the Police Officer found that the same was issued by the school whose stamp it bears.

Merely because it's second copy was not found in the school or that the relevant register had some overwriting of names, though not of the name of "Niranaram", these documents cannot be discarded. The documents at serial Nos. 1 to 3 appear to have been issued on the basis of the school record. "Niranaram" was admitted in the school on 01/04/1986. Thus, the transfer certificate dated 15/08/2001 i.e. the document at serial no.1 is the first Certificate.

45) The Police Officer collected the copies of letter given by "Mukhram" to the Rajkiya Adarsh Uccha Madhyamik Vidyalaya, Jalabsar for obtaining birth certificate of his brother. Such copies are produced with report Exh.16. Similarly, a fresh certificate, addressed to the Police Officer was also given by the Head Mistress dated 23/02/2019 and it is collected and filed with his report by the Police Officer with Exh.16.

Hence, the documents at serial nos.1 to 3, has a genuine source and those are authentic documents. It is a fact that, these documents have not disclosed the name "Narayan" thereon. This aspect will be considered later on, since the purpose of sending the Police Officer was to verify the authenticity of documents only. He was not expected to express his own opinion. It is sufficient that, the documents at serial nos.1 to 3 were issued by the school, the stamp of which is appearing thereon. Therefore, the documents at serial nos. 1 to 3 are found to be trustworthy and authentic documents.

46) The documents at serial nos. 4 and 5 (Annexure' I4 & 'I5') are the documents of Bona fide Residence and OBC Caste Certificate issued by the Tahasildar, Shridungargarh. The document at serial no.6 (Annexure' I6') has not been disputed and it shows that, with effect from 01/04/2001 TahasilShridungargarh, which was earlier in District Churu was removed therefrom and included in the District Bikaner.

Hence, though the certificate dated 15/08/2001 (document no.1) mentions the District Churu, by virtue of the notification dated 23/03/2001, village Jalabsar from Shridungargarh has been included into Bikaner District. The certificates at document serial nos. 4 and 5 has a mention of District Bikaner for village Jalabsar and Tahasil Shridungargarh. These certificates are dated 10/08/2009. Therefore, it is obvious that, the name of District Bikaner has been mentioned thereon.

47) The documents at serial nos.4 and 5 i.e. the certificates issued by Tahasildar can be said to be authentic and genuine. The Police Officer had visited the office of Tahasildar and verified the entries made of both the certificates in the register maintained by the Tahasildar. A statement of Tahasildar named Bhawanisingh s/o Prabhudan was also recorded by the Police Officer. His statement is sufficient to show that, both the certificates at serial nos.4 and 5 were issued by the office of Tahasildar,

Shridungargarh, District Bikaner. Copies of concerned registers have been collected by the Police Officer and submitted with his report.

The serial numbers of the entry made in the registers are matching to the serial numbers on the certificates in the documents at serial nos.4 and 5. Therefore, there is no reason to consider that, the register was not properly kept. The copies of register produced by the Police Officer have been certified by the Tahasildar Shridungargarh, District Bikaner. As such, the certificates of documents at serial nos.4 and 5 can be said to have been issued by the Tahasildar Shridungargarh, District Bikaner. As such, the source is genuine making those documents genuine and authentic. Admittedly, the name thereon is "Niranaram s/o Chetanram" and not "Narayan".

48) With regard to document at serial no.9 (Annexure' L2'), it is a certificate in the name of "Andaram s/o Chetanram". The Police Officer had visited the Rajkiya Madhyamik Vidyalaya Udrasar to examine the T.C. Form of "Andaram". He also recorded statement of a Lecturer named Poonam Jairam Singh from the said school. She was Incharge Head Mistress of the school. According to her, the certificate of T.C. Form i.e. document at serial no.9 was issued by her school.

As such, merely for the reason that it's copy was not there, the said T.C. Form cannot be discarded. The T.C. Form was given on the basis of school register. Copy of such school register was collected and the same has been produced by the Police Officer with his report. At Serial No.1269 thereon, there is the entry of the name of "Andaram s/o Chetanram". Thus, the certificate of document at serial no. 9 is also genuine and authentic.

49) With regard to document at serial no.10 (Annexure' L3'), no claim is made by the advocate for petitioner and he expressed that he would not be in a position to comment as to how the original record corresponding thereto was found to be of some other student. As such, the document at serial no.10 cannot be relied on. The document at serial no.8 (Annexure' L1') is the Pariwar Card. With regard to such document, the Police Officer recorded statement of Gramsevak, who has stated that, the record of the year 1989 was not available in the Grampanchayat Office.

The inquiry made by the Police Officer was misdirected since he was required to make inquiry with the Development Officer, Panchayat Samiti Shridungargarh regarding Pariwar Card i.e. the document at serial no.8. Since, no such inquiry was made, it can be said that, the State did not seriously search for the authenticity of the Pariwar Card. As discussed earlier, the document at serial no.9 is genuine and it is in the name of "Andaram". The name of his father is "Chetanram". The documents at serial nos.1 to 5 show the name of father to be "Chetanram".

The school records similarly indicate. Moreover, the name of the village and District besides the name of father of "Niranaram" and "Andaram" is the same. As such, there is ground to believe that "Chetanram" is the father of "Niranaram" and "Andaram". The Pariwar Card i.e. document at serial no.8, is in the name of "Chetanram". The name of Village is Jalabsar and the names "Anada" and "Nirana" can be seen therein to be the sons of "Chetanram". As such, the Pariwar Card i.e. the document at serial no.8 can very well be relied on.

50) The document at serial no.7 (Annexure' I7') has been reported by the Police Officer to be forged document. It has been issued by Gauradevi as a Surpanch of village Udarasar. She had certified in the document at serial no. 7 that, "Narayan Chaudhary" and "Niranaram" is the name of same person. Her statement, statement of her son Jetharam s/o Todaram and one villager named Udaram was recorded by the Police Officer. All of them disowned the document at serial no.7.

The Police Officer however, has collected one more document having the signature of Surpanch Gauradevi and recorded statement of one Kesraram who was Gramsevak, in support thereof. However, the signature of Sarpanch on the document collected by the Police Officer having reference to the statement of Kesraram and her signature on document at serial no. 7 appear to be identically same.

As such, in the circumstances when Gauridevi admitted that, she was a Sarpanch, the document at serial no. 7 cannot be doubted as to the signature of the Sarpanch. Gauradevi was not able to see and not able to read. As such, the statements of Jetharam and Udaram would be not be much relevant, when a document for comparison of signature has been collected by the Police Officer. The signature of Sarpanch thereon and document at' serial no. 7 appear to be identical. Hence, even the document at serial no. 7 can be considered.

51) As per Section 94 of the Act, only when the school certificate or the certificate of Panchayat and Corporation etc. is not found, the ossification test can be resorted to. Since, in this case authentic school certificates are on record, at this moment, there is no need to consider the document at serial no.11 (Annexure' J1').

52) In view of the documents mentioned above, it appears that, "Niranram" and "Anadaram" are brothers. It also appears that, "Chetanram" is their father. They are resident of Jalabsar. The school record, which is discussed in foregoing paragraphs, indicate the date of birth of "Anadram s/o Chetanram" to be 04/04/1980, while the date of birth of "Niranaram" appears to be 01/02/1982. Thus, from these school documents it can be said that, "Anadaram" is elder to "Niranaram". In the Pariwar Card i.e. document at serial no.8, same is the position since "Anadaram" is appearing to be elder to "Niranaram".

Here, since the name of father of both these persons is the same, and their village is also the same, help can be taken from the observations made in the case of "Raju (supra)" by the Hon'ble Supreme Court of India. If the certificates are read with reference to the document at serial no. 7, it can be said that "Niranaram" and "Narayan" is one and the same person. There is nothing on record to show that, "Chetanram" had another son by name "Narayan". Even the certificate (document at serial no. 7), is not considered, there is sufficient material on record to indicate that, the school documents and the documents issued by the Tahasildar and the Pariwar Card are genuine and valid.

These documents make it clear that, "Niranaram" is brother of "Anadaram". Hence, both are siblings. There is nothing to show that, any other person by name "Niranaram Chetanram" was found at village Jalabsar. Therefore, from the documents on record, the document at serial no. 7 can also be believed. Though, none of the documents mention the name "Narayan'', the name "Niranaram" has to be said to be another name of "Narayan".

53) Though, not for exclusively basing the decision, but for the general observation in ordinary sense, it can be said that, people in Rajasthan may be accustomed to pronounce "Niranaram" easily, but the people in the state of Maharashtra, especially in Pune, may find it difficult to pronounce "Niranaram". For such reason, there is possibility of the pronunciation mistake to call "Niranaram" as "Narayan" in Pune.

54) If "Niranaram" is not "Narayan" and "Narayan" is some other person, then the State should have brought clear documentary evidence of school record of "Narayan" showing him to be different person. There is no such record. As such, the police record of the Sessions Case may have shown the name "Narayan" without asking for any identification documents as to his name, in the school record. There is not a single document filed by state to show that the name of "Narayan's" father is not "Chetanram" but its different.

55) In view of the documents of school and the documents issued by the Tahasildar, the date of birth of the petitioner appear to be 01/02/1982. As such, on 24/08/1994 his age would be around 12 years and 6 months. If the Pariwar Card, which was issued in the year 1989 is seen, the age mentioned therein is 12 years. If it is the age mentioned for the year 1989, then in the year 1994, more particularly on 24/08/1994, the age of the petitioner would be 16 years and 8 months. Thus, it is still below 18 years.

56) When the school record is available, ossification test cannot be considered. However, even if the document at serial no.11 is taken into account, the range mentioned is 22 years to 40 years in the year 2005. Thus, for the year 1994 the range would come to 11 years to 29 years. This also supports the certificates, more particularly the documents at serial nos.1 to 5, 8 and 9. In view of the above observations, it is abundantly clear that, on the date of incident i.e. on 24/08/1994 the age of the petitioner

was around 12 years and 6 months. Thus, he was a child or a juvenile within the meaning of Section 2(35) of the Act.

Conclusion:

57) On 24/08/1994, the age of Niranaram Chetanram was 12 years and 6 months or around the same. Narayan Chetanram Chaudhary is the same person, whose another name is Niranram Chetanram Chaudhary. Hence, I hold that the petitioner was a juvenile on the date of commission of offence. Hence, the report."

(quoted verbatim from the paperbook)

11. First submission of Mr. Patil is that the question of juvenility cannot be reopened by this application as the applicant had filed writ petition before this Court under Article 32 of the Constitution of India (Writ Petition (Criminal) No.126 of 2013) and this writ petition was dismissed by this Court. He has also submitted that the applicant is relying on records pertaining to another individual as at no point of time earlier he had disclosed that his real name was Niranaram. Even proceeding on the basis that the applicant's actual name is Niranaram, Mr. Patil wants us to discard the entire set of documentary evidences alleging that these documents, particularly the school records, are fabricated.

He has highlighted certain discrepancies in the documents themselves as regards the family members of the applicant and their age. In particular, he has submitted that family members of the applicant had created a forged certificate of the Sarpanch, which was marked as annexure I7 in the report. He has drawn our attention to the statement of the Sarpanch, Gauradevi, as recorded in the Inquiry Report. She had stated, as disclosed in the report, that she had never issued that certificate. He has also taken us through the transfer certificate of Andaram (in some documents referred to as Anadaram and Anandaram), which was marked as L2 in the report and that of Mukhram, marked as L3 therein.

As it appears from the Inquiry Report, these two persons are brothers of the applicant. He has referred to that part of the report, in which the Inquiring Judge records that the principal of the school, Smt. Namrata had stated that admission number 1317 (which was recorded in the transfer certificate of Mukhram) did not bear the name of Mukhram in school records but the admission number 1317 was in the name of one Babulal Shreechandanmal Bhadani, whose date of birth was 6th June 1966.

The principal of the school further stated that said transfer certificate was not signed by the then principal of the school and it was never issued by the school. It has also been stated by Mr. Patil that the family members of the applicant had obtained the residence certificate of Niranaram by affixing the photo as also the caste certificate on 10th August 2009 issued by the Tehsildar officer Shri Dungargarh when the applicant remained imprisoned.

12. Mr. Patil has also questioned the manner in which the inquiry was made. His main submission is that the expression of inquiry as employed in Section 9(2) of the 2015 Act ought to import the same meaning given to it under the Section 2 (g) of the Code of Criminal Procedure, 1973 ("1973 Code").

In this regard he has referred to the cases of Ram Vijay Singh vsState of Uttar Pradesh [2021 SCC OnLine SC 142] and Ashwani Kumar Saxena vsState of Madhya Pradesh [(2012) 9 SCC 750]. In the case of Ram Vijay Singh (supra), a Coordinate Bench of this Court found that the procedure prescribed in Rule 12 of the Rules made under the Juvenile Justice (Care and Protection of Children) Act, 2000 ("2000 Act") is not materially different from provisions of Section 94 of the 2015 Act.

He wants us to distinguish the finding made by a Bench of two Judges of this Court in the case of Ashwani Kumar Saxena (supra), referring to the judgment in the case of Abuzar Hossain alias Golam Hossain vsState of West Bengal [(2012) 10 SCC 489]. He has submitted that the Inquiring Judge, to comply with the mandate of Section 9(2) of the 2015 Act, ought to have recorded evidence of the material witnesses on oath for determination of age but he hastily completed the inquiry.

13. Mr. Chitaley's submissions are in the same line. Relying on decision of this Court in this case of Pawan Kumar Gupta vsState (NCT of Delhi) [(2020) 2 SCC 803], he has argued that once the applicant's plea for juvenility was dismissed, it was not open for him to resurrect the same claim. As regards the name of the applicant, he has emphasised the fact that the certificate of Sarpanch was forged and there was no documentary evidence to substantiate the claim. With regard to the entry in the voters' list where Niranaram Chetanram Chaudhary's name appears, he has pointed out that the said list of 1993 showed the applicant to be of 18 years.

His other submission is that the plea of juvenility ought to be raised in close proximity to institution of the proceedings. On this point the decisions relied upon by him are the cases of Murari Thakur & Another vsState of Bihar [(2009) 16 SCC 256], Pawan vsState of Uttaranchal [(2009) 15 SCC 259], Mohd. Anwar vsState (NCT of Delhi) [(2020) 7 SCC 391] and Surajdeo Mahto & Another vsState of Bihar [(2022) 11 SCC 800]. Having regard to the gruesomeness of the offence, and involvement of the applicant having been proved at all levels of judicial hierarchy, he has drawn our attention to the following passage from the case of Abuzar Hossain (supra):

"39.6 Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."

14. As would be evident from the reasoning contained in the said report, substantial stress was laid by the Inquiring Judge on the school admission register, on the basis of which the "certificate" of date of birth was issued. Referring to this document, the original of which we have seen, it has been submitted that the entries therein were not in right sequence. To give illustration, Mr. Patil has submitted that the entry number 550 relates to the incumbent entering class 4 on 16th August 1984 whereas entry number 551 shows the incumbent's entry into class 1 on 4th September 1985.

Four other entries, 552, 553, 554 and 565 showed sequence of dates of entry of the incumbents thereof in asymmetric order. In fact, his submission has been that this entry register was manufactured and the pages were manipulated. His further submission on this count is that the date of birth of Niranaram recorded as 1st February 1982 ought not to be accepted, having regard to the provisions of Section 35 of the Indian Evidence Act, 1872 ("1872 Act"). On this count, he has relied on decisions of this Court in the cases of Ravinder Singh Gorkhi vsState of U.P. [(2006) 5 SCC 584] and Ramdeo Chauhan alias Raj Nath vsState of Assam [(2001) 5 SCC 714].

On probative value of the entry in the admission register, he has relied on the judgment of this Court in the case of Birad Mal Singhvi vsAnand Purohit [(1988) Supp SCC 604]. On this point, his submission is that the entry regarding age of a person does not carry much evidentiary value to prove the age in absence of materials on which his age was recorded in the school register. He has also taken us through the "pariwar card" dated 1st January 1989, in which the years of birth of Andaram, Niranaram, and Mukhram ought to be 1976, 1977 and 1979, on the basis of age of the said individuals reflected therein.

As per the school records, these years ought to have been 1980, 1982 and 1983. Voter's list dated 1st January 1993 carried the age of Niranaram as 18 years. The cases in which the plea of juvenility was accepted by this Court, Mr. Patil's argument is that age determination was made in borderline cases, between 16 and 18 years. He has also highlighted the fact that the time at which the petitioner was produced before the Magistrate after arrest, the Juvenile Justice Act, 1986 ("1986 Act") was operational.

15. We shall first examine the issue of the actual identity of Niranaram. Is he the same person who has been convicted and subsequently sentenced to death as Narayan? Even in the review petition, the applicant described himself as Narayan Chetanram Chaudhary. The filing date of the review petition is 31st October 2000. From the materials before us, we find that his identity as Niranaram Chetanram Chaudhary surfaced in early part of January 2006, as it would appear from Annexure A7 to the application.

This communication has been captioned as "Mercy Petition on behalf a juvenile to the President." In this Mercy Petition, the applicant has been referred to as Niranaram. Certain public spirited individuals

including a lawyer is a signatory to this "Mercy Petition". Next comes a letter addressed to the Home Department of the Maharashtra Government by the Superintendent, Yerawada, Central Jail dated 19th January 2007.

We have reproduced the text of this letter in earlier part of this judgment. The said communication to which we have referred earlier also describes the applicant as Narayan Chetanram Chaudhary and his date of birth in this communication is shown to be 1st February 1982. This communication was dated 24th January 2006. 16. In the writ petition filed before this Court, a copy of which has been annexed at page 40 of the application, it has been stated in grounds C, D and E:

"C. For that the present Petitioner was ostracized and disowned by him family immediately after his arrest in connection with the said incident. Hence the present Petitioner had no support or effective means of defending his case. Also the present Petitioner did not possess any material indicating his true age.

D. For that recently the father of the present Petitioner after a gap of around 1819 years reestablished contact with the present Petitioner. Form his father the present Petitioner for the first time received documents to indicate his real age at the time of the incident. The present Petitioner seeks to rely on the following documents in order to substantiate his case

i. 'Family Card' - issued by the State of Rajasthan to the father of the present Petitioner, dated 17.2.1992 which records the name of the present Petitioner as 'Nirana' and his age as 12 years.

ii. Transfer Certificate - issued by the Education Department, Rajasthan which records the name of the present Petitioner as 'Niranaram' and his date of birth is recorded as 1.2.1982.

iii. 'Ration Card' - issued by the State of Rajasthan to the father of the present Petitioner which records the name of the present Petitioner as 'Niranaram'.

E. For that from the abovementioned documents it becomes clear that the present petitioner's name is 'Niranaram' and his date of birth is 1.2.1982. Thus, on the date of the incident the present Petitioner was 12 years old. Hence the present Petitioner ought to be treated as a juvenile delinquent and hence could not have been tried in a regular trial."

(quoted verbatim from paperbook)

17. This writ petition was filed on 2nd July 2013, supported by an affidavit of one Mukhram, on 8th April 2013. In that affidavit, the deponent Mukhram described himself to be the younger brother of the petitioner. Though this writ petition was not entertained by this Court, we are referring to this part of the writ petition to demonstrate how the applicant started representing or rerepresenting himself as Niranaram. The present applicant in this writ petition has described himself as Narayan @ Niranaram, son of Chetanram Chaudhary and the same name has been used to describe the applicant in the present application.

In the judgment of the Sessions Court (Sessions Case No.462 of 1994), the accused no.1 has been described as Narayan Chetanram Chaudhary. Thus, we find that he had used the name of Chetanram as his middlename at the time of his trial, which obviously refers to his father's name. He has been consistent in describing his father's name. Now, the question we will have to address is as to whether the very act of posing himself as Niranaram at such a belated stage is to be accepted or not. In paragraphs 53 and 54 of the Inquiry Report we find that the Inquiring Judge had accepted the stand of the applicant that Narayan and Niranaram is the same person.

18. The applicant has sought to establish his identity as Niranaram relying on a series of documents where his father's name has been shown as Chetanram. These include three documents originating from the school, Rajkiya Adarsh Uccha Madhyamik Vidyala, Jalabsar. The said institution is a government school. It uses the letterhead of the State Government with the national emblem. Copies of these documents have been marked "I1", "I2" and "I3" in the Inquiry Report. The Tehsildar of Shri Dungargarh,

Bikaner has also issued a certificate dated 10th August 2009 to the effect that Niranaram is bonafide resident of the Jalabsar and he has been referred to therein as son of Chetanram.

The father's name of the applicant also appears in the OBC Certificate, which is marked "I5" to the application. This certificate is also dated 10th August 2009. A certificate by one Gauradevi, the Sarpanch of Udrasar gram panchayat, Shri Dungargarh records that Narayan Chaudhary is the same person as Niranaram. Subsequently, we find from the report of the Inquiring Judge that both Gauradevi and her son had disowned issuing any such certificate. But in the same report, it has been recorded by the Inquiring Judge that he had matched the signature of Gauradevi appearing in the said certificate with her signature in another document and found them to be identical.

This appears from paragraph 50 of the report which we have quoted above. In the Pariwar Card of Chetanram, which is annexure "LI" to the report, 'Anada', 'Mukhram' and 'Nirana' have been referred to as his sons. This also has different dates. The year 1989 appears to be the date of issue whereas the inspection dates show 22nd September 1991 and 17th February 1992. In the said card, the applicant's age is shown to be 12 years.

Thus, there are age variations of the applicant as appearing in the family card with that of the school records and we shall deal with that aspect later in this judgment. We are referring to these documents here mainly to examine the applicant's claim that he is the son of Chetanram. In the case of Raju (supra), it has been observed that the name of the father on certificate can be a factor for identifying a person with two names floating.

The two transfer certificates (Annexures L2 and L3 of the report) of Anada and Mukhram also carry the name of Chetanram as their father. Again, so far as the transfer certificate of Mukhram is concerned, there is doubt about its originality. But we find that there is constant and consistent reference to Chetanram as father of Andaram, Mukhram and Niranaram appearing in all these documents.

19. The State has taken a plea that at the time of inquiry, sufficient time was not available to them to verify this fact. There are several documents where Niranaram has been shown to be the son of Chetanram. After the Inquiry Report was made in 2019, substantial time has lapsed since we heard the matter. No material was produced by the State to demonstrate that there was any other Niranaram in Jalabsar or another Chetanram. It is a fact that the claimant for juvenility has to establish his case.

But it has also to be appreciated that a death row convict in prison for over 28 years would be under severe limitations in retracing his school records and other forms of ageproof. In such circumstances, in absence of any contrary evidence we accept the finding in the Inquiry Report given by the Principal District and Sessions Judge, Pune that Niranaram has to be said to be another name of "Narayan". Our opinion on this point would not vary even if we reject the certificate of the Sarpanch.

That certificate plays a supportive role in determination of the name of the applicant. Moreover, in all these documents, Jalabsar has been shown as the village of which Chetanram and his family were residents, and this was the place from where he was arrested. In our opinion, the applicant's original name was Niranaram and the applicant has discharged his part of onus to establish that it is he who has been tried and convicted as Narayan. We accept the finding of the Inquiring Judge on this point.

20. As regards maintainability of the present application under Section 9(2) of the 2015 Act, in the case of Hari Ram vsState of Rajasthan and Another [(2009) 13 SCC 211], which authority was quoted with approval in Abdul Razzaq vsState of Uttar Pradesh [(2015) 15 SCC 637], it has been held that claim of juvenility may be raised before any Court which shall be recognised at any stage even after final disposal of the case.

In Vinod Katara vsState of Uttar Pradesh [2022 SCC OnLine SC 1204] the rationale for raising belated claim of juvenility has been explained by a twoJudge Bench of this Court. Hari Ram (supra) and Abdul Razzaq (supra) were decisions rendered under the 2000 Act, but so far as 2015 Act is concerned, the same principle ought to apply. Moreover, in proviso to subsection (2) of Section 9 of the 2015 Act, it has

been specifically stipulated that the juvenility claim may be raised before any Court and shall be recognised at any stage even after final disposal of the case.

Same line of reasoning has been followed in the cases of Ram Narain vsState of Uttar Pradesh [(2015) 17 SCC 699] and Upendra Pradhan vsStae of Orissa [(2015) 11 SCC 124]. The State has relied on the case of Pawan Kumar Gupta (supra) on this point, resisting the Court's intervention at this stage. The accused in that case had accepted the age determination report made by the Investigating Officer and this was recorded in the order of the concerned Magistrate. As per the said report the accused was not a juvenile. The same plea was raised again at the appellate stage before the High Court which was rejected, referring to the order passed by the Magistrate.

In connection with review petition before this Court, the plea of juvenility was raised again, and this was not entertained by this Court. In the said judgment it has been held that once the plea of juvenility is rejected from the stage of Magistrate, the High Court and subsequently the Supreme Court, the convict cannot be permitted to reagitate that plea. In the applicant's case, juvenility plea has been raised for the first time before this Court, albeit after dismissal of his review petition against his conviction and sentence having been upheld by this Court.

21. It is a fact that the juvenility plea was raised in Writ Petition (Criminal) No. 126 of 2013 and this writ petition was dismissed in limine. But this dismissal would not operate as res judicata so far as the present application is concerned. Relief under Article 32 of the Constitution is discretionary in nature and the order of this Court dismissing that petition is not supported by reason. A petition under Section 9 (2) of the 2015 Act contemplates statutory remedy, plea for which can be raised at any stage. In our opinion, on juvenility plea, if a writ petition is dismissed in limine, such order would not foreclose the option of an accused (or a convict) to make plea for juvenility under subsection (2) of Section 9 of the 2015 Act.

22. We shall, accordingly, proceed to examine his claim of juvenility, which has been sustained by the Inquiring Judge in the aforesaid report. In the case of Murari Thakur (supra) a twoJudge Bench of this Court declined to entertain juvenility plea in an appeal in which the appellants had been convicted under Sections 302/34 of the 1860 Code. Such a plea was raised before this Court at the appellate stage. A twoJudge Bench of this Court opined that this point could not be raised at that stage because it was neither taken before the Trial Court nor before the High Court.

It was further observed in this judgment that the question of age of the appellant accused was a question of fact on which evidence, crossexamination etc. was required and therefore it could not be allowed to be taken up at a late stage. This was a case under the 2000 Act, but under the said Act also, provisions of Section 7A thereof is similar to Section 9(2) of the 2015 Act. In our opinion, this view cannot be held to be good law having regard to the specific provisions contained in the proviso to Section 9(2) of the 2015 Act.

Moreover, there is a subsequent decision from a Bench of same strength in the case of Ashwani Kumar Saxena (supra) in which this Court has examined the manner in which the documents pertaining to establishment of juvenility ought to be examined and we shall deal with this authority later in this judgment.

Another twoJudge Bench of this Court, in the case of Ajay Kumar vsState of Madhya Pradesh [(2010) 15 SCC 83], referring to Section 7A of the 2000 Act has held that an inquiry is to be conducted by the Court before whom such a plea is raised and the Court has to render a finding as to whether or not the claimant was a juvenile. As per this judgment, in case the claimant is found to be juvenile, Court has to refer the matter to the Board for passing appropriate order and in such a situation, sentence passed by the Court shall have no effect.

23. In Pawan (supra) a Bench of Coordinate strength opined that in a case where plea of juvenility is found unscrupulous or the materials in support of such plea lack credibility and do not inspire confidence and even prima facie satisfaction of the Court is not made out, a further exercise to examine such a claim would be unnecessary.

In that judgment, this Court reflected upon the documents based on which the juvenility claim was being raised and came to such a finding. So far as this case is concerned, in the order passed on 29th January 2019, the context in which inquiry was directed has been expressed. The relevant part of this order has been quoted earlier in this judgment. Thus, the observations made in the case of Pawan (supra) do not apply in the facts of this case, where inquiry has already been directed.

24. In Mohd. Anwar (supra) and Surajdeo (supra), (in the latter case, author of this judgment was a party), two Coordinate Benches of this Court opined that mitigating circumstances like juvenility of age ordinarily ought to be raised in trial itself and belated raising of such plea may also underline the lack of genuinity of the defence case. In the case of Surajdeo (supra), plea of juvenility was raised for the first time before this Court on the basis of school leaving certificate alongwith admit card issued by the Bihar School Examination Board.

The Court found that the name of the juvenile claimant did not appear on the documents. But these were decisions rendered in the facts of the respective cases and neither of these two cases lay down absolute proposition of law that the juvenility plea cannot be raised at the stage the applicant has filed his petition under Section 9(2) of the 2015 Act. Moreover, this Court has already directed inquiry and we do not think the applicant's plea can be rejected on the ground of being belated claim in the present case.

25. Next comes the question as to whether the course adopted by the Inquiring Judge was in terms of the provisions of the 2015 Act or not. Mr. Patil, relying on Section 103 of the 2015 Act submitted that the inquiry had to be in terms of the Code of Criminal Procedure, 1973. Section 103 of the 2015 Act reads:

"103. Procedure in inquiries, appeals and revision proceedings.-

(1) Save as otherwise expressly provided by this Act, a Committee or a Board while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trial of summons cases.

(2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)". So far as the question of determination of age through inquiry by the Court, no specific statutory procedure has been brought to our notice. The statutory provision contained in Section 94 of the Act is relevant in this regard and the said Section stipulates:

"94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

26. One of the arguments on behalf of the State has been that the Inquiry Report was prepared in a flawed manner, not conforming to the provisions of the 1973 Code. In this regard, Mr. Patil drew our attention to Section 2(61) of the 2015 Act, which stipulates that "all words and expressions used but not defined in this Act and defined in other acts shall have the same meaning respectively assigned to them in those Acts". On this count, his main argument has been that the Inquiring Judge ought to have taken evidence in the manner provided in 1973 Code while returning his finding on juvenility of the applicant.

27. It is apparent that the Inquiring Judge has conducted the inquiry typically as a factfinding inquiry is conducted and has not followed the procedure of summons trial. The documents on which he relied on were not formally proved as is the normal procedure in a trial and there was no examination or crossexamination on oath. But as it would be evident from subsection (1) of Section 103 of the 2015 Act, the prescription for following the procedure in summons cases is for the Juvenile Justice Board ("Board") or the Child Welfare Committee ("Committee") while holding any inquiry under the 2015 Act.

Under Section 9(2) of the 2015 Act the Court also has been empowered to make an inquiry if the Court itself is of opinion that the person was the child on the date of the commission of offence. The mandate of following summons procedure has not been prescribed so far as inquiry which ought to be conducted by the Court. The manner in which evidence could be taken has not been mandated. The manner in which the Court shall conduct such inquiry has also not been specifically prescribed. The procedure which has been followed by this Court in the present case has been to direct a Principal District and Sessions Judge, a Senior Judicial Officer at the State Level, to conduct inquiry within a given timeframe.

As we find from the Inquiry Report, the Inquiring Judge had directed a police officer to make authentication of the documents relied upon by the applicant and after the police officer gave his views on the authenticity of the documents, finding discrepancy in some of them. Thereafter, hearing was conducted before the Inquiring Judge, in which prosecution was represented by an officer holding the rank of Director General of Police ("DGP").

Both the prosecution and police had filed report and statement before the Inquiring Judge. The Inquiring Judge himself applied his mind considering the submissions of the prosecution as also the learned advocate of the applicant and the applicant himself was produced before the Inquiring Judge. The Inquiring Judge had marked the documents filed before him as exhibits. The Inquiring Judge examined each of the documents upon ascertaining the stand of the DGP and also the advocate representing the applicant.

In application filed before us, extract from the school register was annexed which showed applicant's date of birth as 1st February 1982. Before the Inquiring Judge, we find that in addition to the documents annexed to the application, a certificate of date of birth issued by the school authority was also furnished by the applicant. The latter was issued on the basis of school register but this certificate was dated 30th January 2019.

28. We find no flaw in the procedure which has been adopted by the Inquiring Judge. So far as the procedure for making an inquiry by the Court, in our opinion Section 9(2) of the 2015 Act does not prescribe scrupulously following trial procedure, as stipulated in the 1973 Code and the Indian Evidence Act, 1872. Section 9 of the 2015 Act reads:

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall,

without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

The requirement to follow the Code is "as far as practicable," as per Section 103 (2) of the 2015 Act. The legislature, thus, while prescribing the summons trial procedure for inquiry by Board or Committee on age determination of a juvenile claimant has not mandated any specific procedure for inquiry by the Court. It follows, by implication, that the Court can formulate its own procedure for conducting inquiry on this count.

So far as the present case is concerned, this Court had directed inquiry to be conducted by the Inquiring Judge at the first level, before whom the applicant and the prosecution had sufficient opportunity to present their version. The report of the Inquiring Judge was subsequently examined by us, again giving adequate opportunity to both sides. We have ourselves called for the original admission register from the school. The principalincharge of the school, Namrata Prabhusingh had given a statement in writing at the inquiry stage, and the translated version of which appears at page 311 of the Inquiry Report. She has stated:

"With reference to aforesaid, the name of Niranaram s/o Chetanram, Jalabsar has been recorded in the Student Admission Register of our Rajkiya Adarsh Higher Secondary School, Jalabsar, Shreedungargad at Student Admission No. 568. In accordance with the said record, his date of birth is written as 01.02.1982. No student by name Narayan was in our school."

(quoted verbatim from paperbook)

29. In Ashwani Kumar Saxena (supra) twoJudge Bench of this Court, dealing with the provisions of the 2000 Act observed and held:

"25. Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board, committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an "inquiry" and in what manner that inquiry has to be conducted is provided in the JJ Rules.

Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expressions "court shall make an inquiry", "take such evidence as may be necessary" and "but not an

affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view reemphasise the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry.

Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word "inquiry" has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. Let us now examine the meaning of the words "inquiry", "enquiry", "investigation" and "trial" as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. "Inquiry" as defined in Section 2(g) CrPC reads as follows:

"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;" The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in Section 2(h) CrPC reads as follows:

"2. (h) 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"

The expression "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the court/the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid down under Rule 12 and not following the procedure laid down under the Code.

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Penal Code or under other penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold the inquiry.

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence

under the penal laws forgetting the fact that the specific procedure has been laid down in Section 7A read with Rule 12.

31. We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 12(3)(a)(i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. "Age determination inquiry" contemplated under Section 7A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school.

Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subrule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to subrule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct.

But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."

30. The case of Ashwani Kumar Saxena (supra) has been referred to in several judgments of this Court and the ratio thereof still holds good. Though that was a judgment delivered under the 2000 Act, the procedure for determining juvenility in the 2015 Act remains broadly the same and hence this authority shall remain valid for an inquiry under the 2015 Act. There is a decision of a Single Judge of the Allahabad High Court (Lucknow Bench) in the case of Sheo Mangal Singh and Others vsState of U.P. [(1989) SCC OnLine All 605] in which, dealing with the 1986 Act, view has been taken that the word "inquiry" in Section 3 therein means an inquiry under the said Act and not an inquiry under the 1973 Code.

In Section 2(t) of the 1986 Act, provisions similar to Section 103 of the 2015 Act had been engrafted. The expression "inquiry", in the manner in which it has been used in the 1973 Code cannot be transplanted in toto so far as the 2015 Act is concerned, to fit the meaning of inquiry therein. It has an element of search or investigation under the 2015 Act, not in the sense these words are used, interalia, in Chapters XXIII and XXIV of the 1973 Code, which the Court may require to undertake while determining a juvenility claim.

The 1973 Code also contemplates preliminary inquiry under Sections 148 and 174 of the Code and the said expression has not been employed in the 1973 Code to convey a uniform meaning or procedure. We are of the view that the meaning and scope attributed to the expression "inquiry" in the case of Ashwani Kumar Saxena (supra) to be the proper construction of this word and may be followed in dealing with the question of determination of juvenility claim under the 2015 Act. Mr. Patil has argued that the ratio in the case of Ashwani Kumar Saxena (supra) may have gotten diluted in view of the judgment of this Court in the case of Abuzar Hossain (supra), delivered by a threeJudge Bench.

But Abuzar Hossain (supra) deals with the context in which inquiry shall be directed under the 2000 Act and Rules made thereunder. This authority does not come into conflict with ratio of the decision in the case of Ashwani Kumar Saxena (supra), to the extent the latter judgment explains the meaning and implication of the expression "inquiry" under the 2000 Act and Rules made thereunder. The aim of such inquiry obviously is to determine the juvenility of the claimant.

So far as Section 94 of the 2015 Act is concerned, though the said provision deals with determination of age of a juvenileclaimant by the Committee or the Board, in our opinion the documents or tests referred to therein would guide the Court as well in making inquiry of such nature. In absence of any specific legislative mandate as regards the course a Court ought to undertake in an inquiry under Section 9(2) of the said Act, the prescription of the provisions of Section 94(2) provides a safe guidance which the Court ought to follow. The result of such inquiry pronounced by the Court would be in the nature of a declaration on juvenility of a claimantaccused.

31. In the case of Rishipal Singh Solanki vsState of Uttar Pradesh and Others [(2022) 8 SCC 602], a twoJudge Bench of this Court took this view, considering a large body of cases on this subject and observed:

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under subsections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of subsection (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with subsection (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply.

Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or subsection (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per subsection (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

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.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

32. Was the Inquiring Judge wrong in giving his findings? The documents on which he has primarily relied upon are the school register, certificate of date of birth of Niranaram issued by the school authorities on 30th January 2019 and transfer certificate dated 15th August 2001. The latter, however, is not a certificate of transfer showing Niranaram's shifting to another school but this certificate records that he had left from Class III on 15th May 1989. Then there is transfer certificate of Andaram dated 19th September 2003 which shows the date of birth of Andaram as 4th April 1980.

There was another transfer certificate before the Inquiring Judge of Mukhram, but this was discarded by the Inquiring Judge as the same did not correspond with the school records. All the aforesaid documents appear to have their origin in the admission register of the school, the original of which we have secured and seen. Apart from the documents of the school, there is a family card, to which we have referred to earlier. The date of issue of Family Card is 1989 and, in this card, issued by the State Government,

Nirana's age is shown to be 12 years. But there are two other signatures of authorities on this card, of 1991 and 1992.

For this reason, we choose to ignore this document for our inquiry. Apart from these materials, there is extract from the electoral roll which shows age of Niranaram to be 18 years on 1st January 1993. So far as per this recordal, his age at the time of commission of offence would be 19 years. The school documents point to Niranaram's age to be below 16 years in the year of commission of offence. The case of Abuzar Hossain (supra) was relied upon by the learned counsel for the State to contend that production of documents of the threshold stage of juvenilityclaim is sufficient to call for an inquiry but further inquiry is necessary to examine the authenticity or the genuineness of documents involved.

In Parag Bhati (Juvenile) through Legal GuardianMotherRajni Bhati vsState of Uttar Pradesh and Another [(2016) 12 SCC 744], in relation to the similar provision under the 2000 Act it has been highlighted that the credibility of documents should be prima facie to direct inquiry. In the cases of Manoj alias Monu alias Vishal Chaudhary vsState of Haryana and Another [(2022) 6 SCC 187], Ravinder Singh Gorkhi (supra) and Birad Mal Singhvi (supra) the necessity of the documents being reliable has been stressed for determining the juvenility claim.

33. As we have already stated, the school in question is a government school. The "date of birth certificate" of Niranaram has been issued by the office of the headmaster of the said school. This certificate has been issued on the letterhead of the State Government carrying the national emblem. The principal of the school has in writing disclosed that the content of the admission register is maintained in ordinary course of business. Hence, in normal course the said register would satisfy the test specified in Section 35 of the 1872 Act, of being a relevant fact. The case of Birad Mal Singhvi (supra) dealt with age disclosure in relation to election and not under 2015 Act.

The latter gives a guideline under Section 94 thereof about the documents which shall be accepted as evidence. The certificate of date of birth has not been accepted by us straightway. In the present application, extract from the admission register has been annexed, supported by an affidavit of the applicant himself. Moreover, we had ourselves called for the original school admission record by our order passed on 8th September 2022, requesting Dr. Manish Singhvi learned Additional Advocate General, State of Rajasthan to ensure production of the same and the said register was produced before us.

34. As regards authenticity or genuineness of the admission register, which forms the basis of certificate of the applicant's date of birth, argument of Mr. Patil is that the whole register was fabricated. His submission is that at the time the extract therefrom was produced before the Inquiring Judge, the same was not paginated. He also argues that the register was not stitched. Further, he has submitted that serial entry no. 566 of the register shows the date of entry of the student to be 2nd February 1980, which is not in order in relation to the other entries.

He has also referred certain other entries in the register prior in order to serial no. 568, in which dates of admission of the respective students are earlier than that of the applicant. But these entries, at best, would show some defect in maintaining the records and cannot lead to the conclusion that the entire admission register is fabricated. Reference has also been made to an entry of one Lekhram, that stood against serial no. 423, which reappeared in entry 562. The endorsement of the school in serial no. 423 is that "his name was deleted" whereas against entry no. 562, recordal is "as per previous records". This clearly appears to be the case of readmission or reentry in the school.

His further stand is that there was interpolation of pages. He has again pointed out that one of the pages (page no. 33) of the register has been stitched in reverse. But these are nitpicking submissions and cannot lead to the conclusion that admission register itself is fake. So far as Niranaram's name is concerned, in the admission register there is no discrepancy. His serial number is 568 which falls in order in which the register is maintained and is in sequence with the admission entries of other students barring few minor discrepancies as regards names in other entries.

Even if the register has been freshly stitched and paginated to be sent to this Court, that would not lead to a conclusion that the whole thing has been fabricated. Moreover, there is no clear evidence to demonstrate that at the time of initial inquiry, the register was unstitched or without pagination. We have ourselves seen the register and it is of sufficient vintage. Thus, we agree with the Inquiring Judge that the date of birth recorded therein was not a fabricated entry.

35. Now there are four other dates reflecting different ages of the applicant. The first is the age in the chargesheet on the strength of which he has been tried, convicted and sentenced, that is 20 years in the year 1994. But the source of disclosure of this age has not been brought to our notice by learned counsel for the parties, except that the applicant's age was given by his counsel before the High Court at the stage of appeal hearing.

Next is the age reflected in the electoral roll and if one goes by that, then his age at the time of commission of offence would be 19 years. The electoral roll was referred to in the police report dated 2nd March 2019 but does not appear to have been considered by the Inquiring Judge. The third source of his age is the family card, in which it is mentioned that he was 12 years in 1989 or 1991/1992. That would have taken his year of birth to 197779, and that would make him 15 to 17 years of age at the time of commission of offence.

For the reasons we have already explained, we have discarded the latter document. Now which document or source is to be accepted by us? In the case of Pawan (supra), a Coordinate Bench of this Court has rejected the juvenility plea when documents to raise the plea of juvenility were collected after conviction. In that judgment, this Court cited the case of Murari Thakur (supra) and the Coordinate Bench observed:

"41. The question is: should an enquiry be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court. Where the materials placed before this Court by the accused, prima facie, suggest that the accused was "juvenile" as defined in the 2000 Act on the date of incident, it may be necessary to call for the report or an enquiry be ordered to be made.

However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, we do not think any further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the Court must be satisfied by placing adequate and satisfactory material that the accused had not attained the age of eighteen years on the date of commission of offence; sans such material any further enquiry into juvenility would be unnecessary.

42. As regards A2, two documents are relied upon to show that he had not attained the age of eighteen years on 2592003/ 26 92003. His age (17 years) mentioned by the trial court at the time of recording his statement under Section 313 CrPC is a tentative observation based on physical appearance which is hardly determinative of age. The other document is the school leaving certificate issued by the Headmaster, Prem Shiksha Niketan, Bilaspur, Rampur which does not inspire any confidence as it seems to have been issued on 16102006 after A2 had already been convicted.

Primary evidence like entry from the birth register has not been produced. We find it difficult to accept Annexure P3 (school leaving certificate) relied upon by the counsel. For A1, the only document placed on record is a school leaving certificate which has been procured after his conviction. In his case also, entry from the birth register has not been produced. We are not impressed or satisfied with such material. There being no satisfactory and adequate material, prima facie, we are not persuaded to call for report about the age of A1 and A2 on the date of commission of offence."

36. So far as the case of the applicant is concerned, on the basis of materials disclosed in the present application, an inquiry was directed in the order passed on 29th January 2019. In the case of Pawan (supra) school leaving certificate issued by the headmaster of a school did not inspire the confidence of the Court. Here however, we have called for the original admission register itself, on the basis of which

certificate of birth was issued. The latter is a document specified under Section 94 (2)(a)(i) of the 2015 Act. In the order of sequence the age proof is required to be proved as per the aforesaid provision, the date of birth certificate is the first document to be examined for determination of age.

Thus, factually the ratio of the said judgment can be distinguished. In the case of Pawan Kumar Gupta (supra), the juvenility claim was raised for the second time and for this reason it was held that the same plea was not maintainable. A Coordinate Bench in the case of Mohd. Anwar (supra) has observed that belated claims not only prevent proper production and application of the evidence but also undermine the genuineness of the defence.

But this authority does not lay down, as an absolute proposition of law, that belated production of age proof cannot be examined to determine juvenility of an accused. Furthermore, Section 9 (2) of the 2015 Act specifically stipulates that such plea can be raised "at any stage". The ratio of the case of Surajdeo Mahto (supra) would also not apply in the facts of this case as in this proceeding the Inquiring Judge has gone into the question as to whether the certificates relied upon by the applicant belonged to him or not and has returned a finding that Niranaram was indeed Narayan. We have also tested this finding and sustain the view of the Inquiring Judge.

37. In the cases of Ramdeo Chauhan (supra), Sanjeev Kumar Gupta vsState of Uttar Pradesh and Another [(2019) 12 SCC 370], Parag Bhati (supra), Manoj (supra), Babloo Pasi vsState of Jharkhand and Another [(2008) 13 SCC 133] and Birad Mal Singhvi (supra), different Benches of this Court came to findings as regards reliability of the documents upon applying mind and none of these authorities lay down that the certificate of date of birth by the school authorities based on admission register of the school will not be acceptable for an inquiry under Section 9(2) of the 2015 Act.

On the other hand, in the order of priority in the aforesaid provision, the date of birth certificate by the school authority has been given the preeminence. Though the heading of the said section reads "presumption and determination of age", the section itself does not specify that the date of birth certificate by the school would only lead to presumption. The way the provision thereof has been framed, the documents referred to in the first two subclauses of subsection (2) of Section 94 of the 2015 Act, if established in the order of priority, then the dates reflected therein has to be accepted to determine the age of the accused or convict claiming to be a juvenile on the date of commission of the offence.

In the event the document referred to in Section 94 (2)(i) is there, the inquiring body need not go to the documents referred to in subclause (ii) thereof. The only caveat, implicit thereto, which has been sounded by several decisions of this Court, is that the document must inspire confidence. But lack of inspiration of the agedetermining authority must come for some cogent reason and ought not to be sourced from such body's own perception of age of the juvenileclaimant.

38. A Constitution Bench in the case of Pratap Singh vsState of Jharkhand and Another [(2005) 3 SCC 551] dealing with the meaning of juvenile under the 1986 Act and the 2000 Act, held:

"12. Clause (l) of Section 2 of the 2000 Act defines "juvenile in conflict with law" as meaning a juvenile who is alleged to have committed an offence. The notable distinction between the definitions of the 1986 Act and the 2000 Act is that in the 1986 Act "juvenile in conflict with law" is absent. The definition of delinquent juvenile in the 1986 Act as noticed above is referable to an offence said to have been committed by him.

It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority and/or court he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have committed. In our view, therefore, what was implicit in the 1986 Act has been made explicit in the 2000 Act."

39. In a later decision, in the case of Jitendra Singh alias Babboo Singh and Another vsState of Uttar Pradesh [(2013) 11 SCC 193], this Court's view was reflected in the following passage:

"72. The upshot of the above discussion is that while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the 2000 Act, no matter the later enactment was not on the statute book on the date of the occurrence. The difficulty arises when we examine whether the trial and the resultant order of conviction of the appellant would also deserve to be set aside as illegal and without jurisdiction. The conviction cannot however be set aside for more than one reason:

72.1. Firstly, because there was and is no challenge to the order of conviction recorded by the courts below in this case either before the High Court or before us. As a matter of fact the plea of juvenility before this Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the court concerned had no jurisdiction to try the appellant.

72.2. Secondly, because the fact situation in the case at hand is that on the date of the occurrence i.e. on 2451988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the 1986 Act that covered the field at that point of time, nor did the 1986 Act deprive the trial court of its jurisdiction to try the appellant for the offence he was charged with.

The repeal of the 1986 Act by the 2000 Act raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional court by enacting Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which is to the following effect:

"20.Special provision in respect of pending cases.-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

In Dharambir vsState (NCT of Delhi) and Another [(2010) 5 SCC 344] and Mahesh Jogi vsState of Rajashthan [(2014) 15 SCC 184], similar view has been taken by this Court. In Satya Deo alias Bhoorey vsState of Uttar Pradesh [(2020) 10 SCC 555], it was observed by a twoJudge Bench of this Court that in light of Section 6 of the General Clauses Act, 1897 read with Section 25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than 18 years of age at the time of commission of offence. The reasoning of the Court was that such right stood acquired and fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 1st April 2001.

40. So far as the applicant is concerned, his claim of juvenility based on his date of birth in the school certificate would not vary based on definitions of juvenile, "juvenile in conflict with law" or "child in conflict with law" under the 1986 Act, 2000 Act or the 2015 Act. For applying the procedure for determining his claim, of juvenility or of being a child, in our opinion, the law applicable at the time of undertaking that exercise by the concerned statutory body would prevail. Hence, in his case, we have tested his claim on the basis of the provisions of Section 9 read with Section 94 of the 2015 Act.

41. Under the 2015 Act the date of birth certificate ought to be the main factor for determination of juvenility. In the case of Rishipal Singh Solanki (supra), the twoJudge Bench of this Court has laid down the principle that an inquiry initiated under Section 9 (2) of 2015 Act would be similar to that contained in Section 94 of thereof. We accept this view. We have called for the source of the date of birth certificate, which recorded the applicant's birth date at the time of his entry into the school which was in the year 1986.

So far as the inconsistent dates of birth mentioned in the other documents, none of them is specified to be taken into consideration for undertaking the process of age determination as laid down in Section 94 (2) of the said statute. Once the applicant has discharged his onus, in support of his claim of juvenility by producing the date of birth certificate from the school, the State had to come up with any compelling contradictory evidence to show that the recordal of his date of birth in the admission register was false. The State, in this case, has not come up with any such compelling evidence which would render such certificate to be unreliable or false.

The State and the complainant have sought to disprove the applicant's case on the basis of materials disclosed by him only, apart from the electoral roll. Here, we cannot indulge in any guesswork to doubt the entry in the school register. No evidence has been led to contradict the basis of the age of the applicant reflected in the aforesaid document. The certificate of date of birth as evidence of age having been provided in the statute itself, we shall go by that. The other factor which has crossed our mind is as to whether a boy of 12 years could commit such a gruesome crime.

But though this factor shocks us, we cannot apply speculation of this nature to cloud our adjudication process. We possess no knowledge of child psychology or criminology to take into account this factor while examining the report of the Inquiring Judge. Moreover, the age of the applicant revealed in the ossification test keeps the age of the applicant as claimed by him, within the range specified in the report. The said test was conducted in the year 2005, and his age was determined in the range of 22 to 40 years. If we take 22 years as his age in 2005, then his year of birth would haven been 1983. That would broadly correspond to the date of birth contained in the admission register.

42. In the case of Rishipal Singh Solanki (supra), it has been laid down that 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. In the case of State of Jammu & Kashmir (Now U.T. of Jammu and Kashmir) and Others vsShubham Sangra [2022 SCC OnLine SC 1592], the decision of Parag Bhati (supra) was followed, which laid down that benefits of the 2000 Act ought to be extended to only such cases wherein the accused is held to be a juvenile on the basis of clear and unambiguous case that the accused was minor on the date of the incident and the documentary evidence at least prima facie inspires confidence regarding his minority.

It was opined in this judgment that when an accused commits a grave and heinous offence, his plea of juvenility cannot be allowed to come to his rescue and Court cannot take a casual or cavalier approach in determining his minority. A somewhat different view has been expressed in the case of Rishipal Singh Solanki (supra), which we have referred to above. A view similar to that taken in Rishipal Singh Solanki (supra) was reflected in the decision of a twoJudge Bench of this Court in the case of Rajinder Chandra vsState of Chhattisgarh and Another [(2002) 2 SCC 287].

In our opinion however, in the event the Court, Board or the Committee is satisfied that the claimant on the date of offence was a juvenile, the dimension of gravity of the offence cannot be considered by the Court to reject the benefit granted to an accused or convict under the 2015 Act. We agree with the observations made in the cases of Shubham Sangra (supra) and Parag Bhati (supra) that a casual or cavalier approach should not be taken in determining the age of the accused or convict on his plea of juvenility, but a decision against determination of juvenility ought not to be taken solely for the reason that offence involved is heinous or grave.

The degree or dimension of the offence ought not to direct approach of the Court in its inquiry into juvenility of an accused (in this case a convict). The exception where a different view can be taken has

been provided by the legislature itself in Section 15 of the 2015 Act and if on the basis of commission of heinous crime, a juvenile is required to be denied the benefit of the 2015 Act, the course specified therein would be required to followed.

43. In the light of our findings and the reasons we have disclosed above for arriving at such finding, we accept the report of the Inquiring Judge. We declare that the date of birth of the applicant as reflected in the certificate issued by the Rajkiya Adarsh Uccha Madhaymik Vidyalaya, Jalabsar, tehsil Shri Dungargarh, district - Bikaner, dated 30th January 2019, a copy of which has been annexed in the Inquiry Report as "I2", is to be accepted for determining his age at the time of commission of the offence of which he has been convicted. Going by that certificate, his age at the time of commission of offence was 12 years and 6 months.

Thus, he was a child/juvenile on the date of commission of offence for which he has been convicted, in terms of the provisions of the 2015 Act. This shall be deemed to be the true age of Niranaram, who was tried and convicted as Narayan. He has already served more than 3 years of incarceration and under the law as it prevailed at the time of commission of offence as also under the 2015 Act, he cannot be subjected to capital punishment. In view of this finding, the order sentencing him to death passed by the Additional Sessions Judge, Pune in Sessions Case No. 462 of 1994 and subsequently confirmed by the High Court and by this Court would stand invalidated by operation of law.

He shall be set free forthwith from the correctional home in which he remains imprisoned, as he has suffered imprisonment for more than 28 years, having regard to the provisions of Section 18 of the 2015 Act. Section 21 of the 1986 Act also carried substantially the same provision on the question of maximum punishment that can be awarded to a delinquent juvenile by the Juvenile Court. The restriction on term of detention that can be awarded by the Board under the 2015 Act to a child below 16 years would also apply to the Court before which the juvenility question is being determined.

44. I.A. No. 5242 of 2016 as also I.A. No. 5245 of 2016 are applications taken out by the applicant for reopening the review petition. We are of the view, however, that an application under Section 9(2) of the 2015 Act is an independent proceeding and we have decided the same without revisiting the review order. Crl. M.P. No. 155609 of 2019 has been filed by the intervenor raising objection to the inquiry report. We dispose of the same as we have considered the content of this petition. All other applications shall stand disposed of. 45. The present application stands allowed in the above terms.

........................J. (K. M. Joseph)

........................J. (Aniruddha Bose)

........................J. (Hrishikesh Roy)

New Delhi;

March 27th, 2023.

Item No. 1501

Narayan Chetanram Chaudhary Vs. State of Maharashtra

[CRLMP. No.157334/2018 in R.P.(Crl.) No. 1139-1140/2000]

[Crl.A. No. 25-26/2000]

[IA Nos. 5242 & 5245 of 2016]

Date: 27-03-2023

These matters were called on for pronouncement of judgment today.

For Petitioner(s)

Mr. R.Basant, Sr.Adv.
Mr. Vishnu P., Adv.
Ms. Trisha Chandran, Adv.
Ms. Shreya Rastogi, Adv.
Mr. Shadan Farasat, AOR

For Respondent(s)

Mr. Sachin Patil, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Geo Joseph, Adv.
Mr. Risvi Muhammed, Adv.
Mr. Durgesh Gupta, Adv.

Mr. Hrishikesh Chitaley, Adv.
Mr. Vijay Kari Singh, Adv.
Mr. Rajat Joseph, AOR

Hon'ble Mr. Justice Aniruddha Bose pronounced the judgment of the Bench comprising Hon'ble Mr.Justice K.M.Joseph, His Lordship and Hon'ble Mr. Justice Hrishikesh Roy.

CRLMP.NO.157334/2018 is allowed and the applicant is directed to be released forthwith in terms of the signed reportable judgment, which is placed on the file.

Original admission register and the documents to be returned to the learned advocate for the State of Rajasthan.

Pending application(s), if any, stand disposed of.

(NIRMALA NEGI) (VIDYA NEGI)
COURT MASTER (SH) ASSISTANT REGISTRAR

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Notification Release Date	06 September 2022
Starting Date for the Online Application Form	06 September 2022
Last Date for the Submission of the Online Application Form	10 October 2022
Release of Admit Card	02 January 2023
Punjab Judiciary Prelims Date	22 January 2023
Punjab Judiciary Prelims Result Declaration Date	22 February 2023
Punjab Judiciary Mains Date	02 June 2023 - 04 June 202
Punjab Judiciary Mains Result Declaration Date	To Be Announced
Punjab Judiciary Interview Date	To Be Announced
Punjab Judiciary Interview Result Declaration Date	To Be Announced

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For the Punjab Judicial Service exam, 159 vacancies for the position of Civil Judge are declared. The list

MCQ'S

1. The object of Indian Evidence Act, 1872 as set out in the Preamble is-
(A) To define and amend the law of evidence
(B) To consolidate, define and amend the law of evidence
(C) To highlight, define and consolidate the law of evidence
(D) To highlight, consolidate, define and amend the law of evidence

2. The evidence unearthed by the sniffer dog falls under-
(A) Oral evidence
(B) Documentary evidence
(C) Hearsay evidence
(D) Scientific evidence

3. Whenever it is directed by the Indian Evidence Act, 1872 that the court shall presume a fact, it shall regard such fact as-
(A) Proved, unless and until it is disproved
(B) Proved, unless and until it is disproved or may call for proof of it
(C) Proved
(D) Proved and shall not allow evidence to be given for the purpose of disproving it

4. A fact is said to be 'not proved' –
(A) When it is disproved
(B) When, after considering the matters before it, the court believes that it does not exist
(C) When a prudent man considers that the fact does not exist
(D) When it is neither proved nor disproved

5. What is the meaning of 'Not proved' under Evidence Act?
(A) Fact does not exist
(B) Non-existence probable
(C) Court has doubt
(D) Neither proved nor disproved

6. That a man heard or saw somethings, it is-
(A) A fact (B) A document
(C) An evidence (D) Done

7. That a man has a certain reputation, it is-
(A) An evidence (B) A fact
(C) A document (D) All

8. Court includes-
(A) All magistrates and Judges
(B) All persons authorised to take evidence
(C) (A) and (B) both
(D) None of these

9. A map or plan is-
(A) A document (B) A fact
(C) An evidence (D) None of these

10. Caricature is-
(A) An evidence (B) A document
(C) A fact (D) None of these

11. Presumption are given-
(A) In Section 2 (B) In Section 3
(C) In Section 4 (D) In Section 5

12. Which is not a document ?
(A) Caricature
(B) Writing
(C) Inscription on a stone
(D) A man has certain reputation

13. Indian Evidence act came into force on-
(A) 1-9-1872 (B) 1-11-1872
(C) 15-9-1872 (D) 1-9-1862

14. Evidence includes –
(A) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry
(B) All documents including electronic record produced for the inspection of the Court
(C) (A) and (B) both
(D) None of these

15. Indian Evidence Act was drafted by –
(A) Charchil (B) Dalhouse
(C) Stephan (D) Macauly

16. Indian Evidence Act applies to-
(A) Proceedings for oaths
(B) Proceedings before arbitrator
(C) Judicial Proceedings in Court
(D) None of these

17. Evidence law is-
(A) Lex Fori (B) Lex loci solutionis
(C) (A) and (B) both (D) None of these

18. Indian Evidence Act includes –
(A) Oral Evidence
(B) Documentary Evidence
(C) Electronic records
(D) All of the above

19. Presumption under Evidence law are-
(A) Presumption of facts
(B) Presumptions of law
(C) (A) and (B) both
(D) None of these

20. Which of the following is not a Court as per definition ?
(A) Magistrate
(B) Judge
(C) Arbitrator
(D) Income Tax appellate authority

21. Which is not a fact ?
(A) That a man said certain words
(B) That a man heard something
(C) That a man has a certain reputation
(D) None of these

22. Which is a document ?
(A) A writing
(B) An inscription on a stone or metal plate
(C) A caricature
(D) All of these

23. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry such statements are known as-
(A) Oral Evidence

(B) Documentary or electronic Evidence
(C) Secondary Evidence
(D) None of these

24. Which is not a document ?
(A) Man said certain words
(B) A map or plan
(C) Inscription on a metal plate
(D) Caricature

25. Which definition is not given in Section 3?
(A) Proved
(B) Disproved
(C) Not proved
(D) Conclusive proof

26. Words printed, lithographed are-
(A) Fact (B) Evidence
(C) Document (D) Fact in issue

27. A man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in particular sense, or is or was at a specified time conscious of a particular sensation is a-
(A) Fact (B) Evidence
(C) Document (D) Fact in issue

28. Which is not a document ?
(A) A man said certain words
(B) A man has certain intention
(C) A man holds certain opinion
(D) None of these

29. A is accused of the murder of B. At his trial the following facts may be in issue-
(A) That A caused B's deaths
(B) That A intended to cause B's death
(C) That A had received grave and sudden provocation from B.
(D) All of these

30. A witness described in detail articles decorated in room while giving statement before Court this is a-
(A) Fact (B) Document
(C) Opinion (D) Cause

31. Which one of following is not included in expression Court under Indian Evidence Act?
(A) All Judges
(B) All persons legally authorised to take evidence
(C) All magistrates
(D) Arbitrator

32. A fact neither prved nor disproved is known as-
(A) Proved (B) Disproved
(C) Not proved (D) Conclusive proof

33. That there are certain objects arranged in a certain order in a certain place-
(A) Is a fact (B) Is an opinion
(C) Is a document (D) Is a motive

34. An Inscription on a metal plate or stone-
(A) Is a fact (B) Is a document
(C) Is an opinion (D) Is a motive

35. Which one of following is a fact?
(A) Hari said (B) Mohan saw
(C) Ram told a lie (D) Any of these

36. "The statement in order to constitute a 'confession' under the Indian Evidence Act, must either admit in terms the offence or at any rate substantially all facts which constitute the offence."
The above view was expressed by the Privy Council in which one of the following cases?
(A) John Makin Vs. Attorney General
(B) Pakla Narain Swamy Vs. Emperor
(C) H.H.B. Gill Vs. King Emperor
(D) Q.E. Vs. Abdullah

37. Which Section of the Indian Evidence Act, 1872 deals only with civil matters?
(A) Section-23
(B) Section-27
(C) Section-53
(D) Section-133

38. In which f the following cases, it was held that Section-27 of the Indian Evidence Act, 1872 is an exception of Sections – 24, 25 and 26?
(A) Pakla Narain Swamy Vs. King Emperor
(B) Inayatullah Vs. State of Maharashtra
(C) State of U.P. Vs. Deoman Upadhyaya
(D) P. Kottayya Vs. King Emperor

39. Palvinder Kaur Vs. State of Punjab relates to which of the following ?
(A) Confession
(B) Dying declaration
(C) Entries in the books of account
(D) Relevancy of Judgements

40. Which of the following does not find a mention as showing state of mind under Section – 14 of the Evidence Act, 1872
(A) III will
(B) Motive
(C) Good Faith
(D) Negligence

41. Provisions have been made under certain Sections of the Indian Evidence Act regarding relevancy of certain facts. Match the entries of List-I and List-II below and write the correct answer using the codes –
List-I
(a) Opinion of Handwriting Expert
(b) State of relevant fact by person who is dead or cannot be found
(c) Previous good character in criminal cases
(d) Oral admissions as to contents of documents
List-II
(Sections)
1. 22
2. 47
3. 32
4. 53

Codes:

	(a)	(b)	(c)	(d)
(A)	2	3	4	1
(B)	3	1	2	4
(C)	1	2	4	3
(D)	4	1	3	2

42. A is accused of the murder of B by beating him. What is not admissible as evidence ?
(A) Whatever was said by A or B or by standers at the time of beating
(B) A has intention for murder of B
(C) Marks on the ground of struggle between A and B
(D) A is a man of bad character

43. Facts not otherwise relevant become relevant if they are inconsistent or makes highly probable or improbable any fact-in-issue or a relevant fact-
(A) Cannot be relevant
(B) Relevant u/s 11 of Evidence Act
(C) Relevant u/s 9 of Evidence Act
(D) Relevant u/s 7 of Evidence Act

44. A rustic woman is apprehension of assault and maltreatment makes a confession for murder of her mother-in-law at the Village Panchayat. Whether this confession is admissible ?
(A) As extra-judicial confession
(B) Inadmissible due to involuntariness
(C) As a supporting evidence to the fact deposed by the other witness
(D) Partly admissible

45. Provisions Sec. 32 (1) of Evidence Act are attracted, where-what is not true?
(A) The cause of death is required to be ascertained
(B) The deceased statement is related to the cause of death
(C) To circumstances connected with death
(D) Verbal statement is not admissible

46. Assertion (A) : In criminal cases the fact that accused is of good character is relevant.
Reason (R): In criminal cases bad character of the accused is always irrelevant.
Select the correct answer using the code given below-
Codes:
(A) Both (A) and (R) are true and (R) is the correct explanation of (A)
(B) Both (A) and (R) are true but (R) is not the correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

47. A confession made by an accused person is relevant –
(A) If it has proceeded from a person in authority unless made in the immediate presence of a Magistrate
(B) If it is made to a police officer, unless made in the immediate presence of a Magistrate
(C) If it is made to a Magistrate provided the police officer is present
(D) If it is made whilst he is in custody of a police officer, and is made in the immediate presence of a Magistrate

48. A wife had only seen a speeding vehicle, which had crushed the husband at a little distance. She had not seen the accident herself. The husband died of heart attack a day later. Can wife's evidence be taken of what the injured husband said to her after the accident ?
(A) Yes, it being a dying declaration
(B) Not, it is merely a hearsay evidence
(C) No, because it is a privileged communication
(D) Yes, it being a part of resgestae

49. A dying declaration-
1. Cannot form the sole basis of conviction unless corroborated.
2. Is a weak kind of evidence.
3. Stands on same footing as any other piece of evidence.
4. Has to be subjected to a very close scrutiny for reliability.
Select the correct answer using the code given below_
Codes:
(A) 1 and 4
(B) 2 and 3
(C) 3 and 4
(D) 1 only

50. Confession can be result of self-talk, communication of confession to another person is not necessary, was held in the case-
(A) Sankaria Vs. State of Rajasthan
(B) Buta Singh Vs. State of Punjab
(C) Sahoo Vs. State of U.P.
(D) Nishikant Jha Vs. State of Bihar

51. Evidence of custom cannot be given to establish-
(A) A civil right
(B) An easementary right
(C) A customary right
(D) A criminal right

52. The question is, whether 'A' committed a crime at Kolkata on a certain day. in answer to this question, which of the following fact is relevant?
(A) That 'A' was out that day at Mumbai
(B) That 'A' habitually goes to Kolkata
(C) That 'A' habitually commits crime
(D) None of the above

53. Match List-I and List-II and select the correct answer using code given below lists-
List-I (Relevancy of facts)
(a) Facts as effect of fact in issue
(b) Facts forming part of same transaction
(c) Facts which constitute preparation for any fact in issue
(d) Facts necessary to explain or introduce relevant facts
List-II (Section of Evidence Act)
1. Section 9
2. Section 8
3. Section 7
4. Section 6
Codes:

	(a)	(b)	(c)	(d)
(A)	1	2	3	4
(B)	4	3	2	1
(C)	3	4	2	1

(D) 2 3 1 4

54. Which one of the following provisions of Evidence Act provides that previous bad character of an accused is not relevant ?

(A) Section 54 (B) Section 52
(C) Section 53 (D) Section 118

55. Which one of the following Section of Evidence Act says that confession caused by inducement, threat or promise is irrelevant?

(A) Section 25 (B) Section 26
(C) Section 27 (D) None of these

56. In which of the following cases it was held that Section 27 of Evidence Act is an exception to Sections 24, 25 and 26 ?

(A) Pakala Narain Swamy V/s. King Emperor
(B) Inayatulah V/s. State of Maharashtra
(C) State of U.P. V/s. Deoman Upadhya
(D) Kotayya V/s. King Emperor

57. Which one of the following statement is correct?

(A) Admission can be oral only
(B) Admission can be documentary only
(C) Admission can be oral or documentary
(D) Admissions are conclusive proof of matters admitted

58. The facts though not in issue are so connected with fact in issue as to form part of same transaction are-

(A) Relevant under rule of res jestae
(B) Not relevant
(C) Hear say evidence
(D) Primary evidence

59. Admissions and confessions are-

1. Exception to hearsay evidence
2. Part of hear say evidence
3. From relevant evidence
4. Admitted in evidence on proof

Select correct answer using code given below-

Code:

(A) 1, 2 and 4 (B) 1, 3 and 4
(C) 1 and 2 (D) 2

60. Case of Pakala Narain Swamy V/s. Emperor relates to-

(A) Doctrine of estoppels
(B) Accomplice
(C) Dying declaration
(D) Hostile witness

61. A confession is inadmissible if it is made by accused-

(A) To a magistrate whilst he is in custody of police officer
(B) To his friend whilst is not in custody of police officer
(C) To doctor whilst he is in custody in of police officer
(D) To spiritual adviser under inducement for good of his soul

62. Extra judicial confession means a confession made-

(A) Before Magistrate in Court
(B) To police officer
(C) To doctor
(D) None of the above

63. A confession is admissible if it is made by accused to-

(A) A police officer
(B) A doctor whilst he is in custody of police officer
(C) His friend whilst he is in custody of a police officer
(D) A spiritual adviser under inducement for good of soul

64. Case of Kashmira Singh V/s. State of M.P. relates to-

(A) Dying declaration
(B) Privileged communication
(C) Confession to police officer
(D) Confession to co-accused

65. Character of a person for purpose of law of evidence is not relevant in one of following situations-

(A) Previous good character of accused in criminal cases
(B) Previous bad character in reply to evidence of good character in criminal cases
(C) Character as affecting amount of damages in civil cases
(D) Character to prove good conduct imputed in civil cases

66. Assertion (A): Extra judicial confession if voluntary, can be relied upon with other evidence.

Reason (R): Extra judicial confession if voluntary can be relied upon with other evidence

Code:

(A) Both (A) and (R) are true and (R) is correct explanation (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

67. An admission under Section 17 of the Indian Evidence Act is-

(A) Only a oral statement
(B) Only a documentary evidence
(C) An oral, documentary or a statement contained in electronic from
(D) An oral or documentary statement

68. Assertion (A): In certain cases corroboration of confession is necessary.

Reason (R): In all cases an extra judicial confession must be corroborated.

Code:

(A) Both (A) and (R) are true and (R) is correct explanation (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

69. Assertion (A): A dying declaration is admissible in evidence.

Reason (R): Its admissibility is founded upon principle of necessity.
Code:
(A) Both (A) and (R) are true and (R) is correct explanation of (A)
(B) Both (A) and (R) are true but (R) is not correct explanation of (A)
(C) (A) is true but (R) is false
(D) (A) is false but (R) is true

70. Admissions are-
(A) Not conclusive proof of matters admitted
(B) Conclusive proof of matters admitted
(C) Not to operate as estoppel
(D) Of no value

71. The question is whether A has ravished and there after murdered. Fact that without making a complaint she said that she had been ravished-
(A) Is relevant as a conduct
(B) Is relevant as a substantive evidence
(C) Is relevant as a secondary evidence
(D) May be relevant under Section 32(1)

72. A relevant confession will become irrelevant when-
(A) Made to a police officer
(B) Made under promise of secrecy
(C) When accused was drunk
(D) In consequence of deception practiced on accused

73- Admissions are-
(A) Conclusive proof
(B) May operate as estoppels
(C) Always irrelevant
(D) None of the above

74. The question is whether A committed a crime at Calcutta on a certain day, fact that on that day A was at Lahore is relevant-
(A) As a motive for fact in issue
(B) As introductory to fact in issue
(C) As preparation of relevant fact
(D) As it makes existence of fact in issue highly improbable

75. Which of the following statement is correct?
(A) Admissions could be oral only
(B) Admissions could be documentary only
(C) Admissions could be oral or documentary
(D) Admissions are conclusive proof of matters admitted

76. A is accused of defaming B by publishing an imputation intended to harm reputation of B. Fact of previous publication by A respecting B showing it will on part of A towards B is relevant-
(A) Because it proves preparation for harming A's reputation
(B) As it is necessary to explain fact in issue
(C) As proving intention to harm B's requtation
(D) As it is effect of relevant fact

77. To what facts of following rules of relevancy have been discussed under Section 8 of Indian Evidence Act?
(A) Motive
(B) Preparation
(C) Previous or subsequent conduct
(D) All of the above

78. Facts showing existence of any state of mind under Section 14 of Indian Evidence Act relate to-
(A) Intention (B) Knowledge
(C) Good faith (D) All of these

79. Who can take Identification parade ?
(A) Police officer (B) Magistrate
(C) Any citizen (D) Any of these

80. The question is whether A committed murder of a person on particular day at Kolkata fact that on that day A was at Lahore-
(A) Is relevant (B) Is irrelevant
(C) Is not relevant (D) None of these

81. Under which Section of the Indian Evidence Act confession before magistrate is relevant?
(A) Section 24 (B) Section 25
(C) Section 26 (D) Section 27

82. Confession before police-
(A) Will be proved
(B) Will not be proved
(C) Will be considered confession
(D) Will not be considered confession

83. Under which Section of the Indian Evidence Act expert opinion is relevant?
(A) Section 44 (B) Section 45
(C) Section 46 (D) Section 41

84. In criminal proceedings fact that accused person has a bad character is-
(A) Irrelevant
(B) Relevant
(C) Above A is right unless evidence has been given that he has a good character
(D) All of the above are incorrect

85. Give correct answer-
(A) Statement is correct
(B) Statement is incorrect
(C) Statement is partly correct and partly incorrect
(D) All of the above statements are incorrect

86. Under which of the following Sections of Indian Evidence Act previous judgements are relevant to bar second suit or trial?
(A) Section 39 (B) Section 40
(C) Section 11 (D) Section 42

87. Under which of the following Sections of Indian Evidence Act opinion as to digital signature is relevant ?
(A) Section 34 (B) Section 39
(C) Section 47 A (D) Section 85 A

88. Which is not relevant in Section 7?
(A) Cause (B) Occasion
(C) Preparation (D) All of the above

89. Which is relevant in Section 8?
(A) Cause (B) Occasion
(C) Preparation (D) None of these

90. A is accused of murder of B by beating him whatever is said or done by A or B or by standers at beating

or so shortly before or after it as to form part of transaction is a relevant fact under Section-
(A) Section 6 (B) Section 9
(C) Section 12 (D) Section 18

91. The question is whether A was poisoned by a certain poison then it is relevant that-
(A) Poison was harmful
(B) Poison fact that other persons who were poisoned by that poison exhibited certain symptoms which experts affirm or deny to be symptoms of that person
(C) Person was lawyer
(D) None of these

92. Section 51 of Indian Evidence Act-
(A) Grounds of opinion when relevant
(B) Opinion on relationship when relevant
(C) Character as affecting damages
(D) In criminal cases previous good character is relevant

93. Previous good character is relevant-
(A) In civil cases
(B) In criminal cases
(C) In particular cases
(D) None of these

94. What is relevant according to Section 9?
(A) Facts necessary to explain
(B) Which establish identity of a person whose identity is relevant
(C) Fix time or place
(D) All of these

95. Section 14 makes relevant facts which shows existence of-
(A) Facts showing existence of any state of mind
(B) Existence of course of business
(C) Facts which are cause
(D) All of these

96. Where question is as to existence of any right or custom facts are relevant ?
(A) Any transaction by which right or custom in question was created claimed codified, recognized, asserted, or denied
(B) Any transaction which was inconsistent its existence
(C) Particular instances in which right or custom was claimed recognized or exercised or in which its exercise was disputed asserted or departed form
(D) All of these

97. Alibi is governed by-
(A) Section 3 (B) Section 11
(C) Section 12 (D) Section 15

98. Previous conviction is relevant under Section –
(A) Explanation 1, Section 14 of Indian Evidence Act
(B) Explanation 1, Section 15 of Indian Evidence Act
(C) Explanation 2, Section 14 of Indian Evidence Act
(D) None of these

99. Confession made to police officer is not relevant-
(A) Under Section 23
(B) Under Section 25
(C) Under Section 36
(D) Under Section 42

100. Section 27 controls-
(A) Section 27 (B) Section 25
(C) Both (A) and (B) (D) Section 24

101. The Opinions of experts are relevant-
(A) Under Section 24
(B) Under Section 36
(C) Under Section 33
(D) Under Section 45

102. Confession caused by inducement, promise are-
(A) Relevant (B) Not relevant
(C) May be relevant (D) All of these

103. Relevancy of statements in maps, chart is provided-
(A) In Section 36 (B) In Section 39
(C) In Section 42 (D) In Section 45

104. Under Section 8 of Evidence Act-
(A) Preparation is relevant
(B) Conduct is relevant
(C) Motive is relevant
(D) All of these

105. Mode of proof of a custom is contained in-
(A) Section 48 of Evidence Act
(B) Section 60 of Evidence Act
(C) Section 39 of Evidence Act
(D) All of these

106. Persons who can make admissions are mentioned in ?
(A) Section 18 of Evidence Act
(B) Section 15 of Evidence Act
(C) Section 21 of Evidence Act
(D) Section 24 of Evidence Act

107. Under Section 21 of Evidence Act-
(A) Admission by persons expressly referred to by party to suit
(B) Proof of admissions against making them and by or on their behalf
(C) Admission by party to proceeding
(D) Facts bearing on question whether act was accidental or intentional

108. Admissions-
(A) Must be in writing
(B) Must be oral
(C) None of these
(D) Both of these

109. Necessity rule as to admissibility of evidence is contained in-
(A) Section 33 (B) Section 32
(C) Section 31 (D) Section 30

110. Section 13 applies to-
(A) Corporal rights
(B) In corporal rights
(C) (A) and (B) both
(D) None of these

111. Admission can be made by-
(A) Suitors in representative character
(B) Person from whom interest derived
(C) Both (A) and (B)

(D) None of these

112. According to Section 40-

(A) Previous judgement relevant to bar second trial or suit

(B) Opinion of experts

(C) Fraud in obtaining judgement or incompetency of Court may be proved

(D) Relevancy of certain judgements in probate etc.

113. According to which section statement as to fact to public nature contained in notifications are relevant ?

(A) Section 33 (B) Section 35

(C) Section 36 (D) Section 37

114. Dying declaration is relevant only when-

(A) Maker of statement is dead

(B) Maker of statement cannot be found

(C) Both (A) and (B)

(D) None of these

115. In which of these expert opinion is relevant ?

(A) Foreign law (B) Finger prints

(C) Art (D) All of these

116. Which of the following is not relevant under Section 8 of Indian Evidence Act?

(A) Intention (B) Occasion

(C) Preparation (D) Previous Conduct

117. Which of the following facts is relevant under Section 10 of Evidence Act?

(A) Those facts which are introductory in Nature

(B) Those facts which help to certain identification and article of a person

(C) Those facts which decipt relation between parties

(D) Those facts from which inference of conspiracy can be traced

118. Which one cannot make admission?

(A) Agent of parties

(B) Person from whom parties have derived interest

(C) Admission by co defendent

(D) Those person who have been made umpires by parties of case

119. Which of the following is not a police officer according to Section 27 of Act?

(A) Police patel

(B) Chowkidar

(C) Exise officer

(D) Member of Railway protection force

120. Which one of the following confessions is not admissible?

(A) When made before Magistrate

(B) When made before magistrate due to force of family

(C) When made before magistrate in presence of police

(D) When made to doctor in presence of police

121. Which subsection of Section 32 of Indian Evidence Act makes the fact of relations between parties who are not alike, relevant ?

(A) Sub-Section 1 (B) Sub-Section 3

(C) Sub-Section 5 (D) Sub-Section 6

122. In which of following dying declaration is not relevant ?

(A) When declarant in his declaration speaks about the circumstances which laid to his death

(B) When declarant in his declaration explains reasons of his death

(C) When declarant in his declaration speaks about the circumstances which led to death of other person

(D) When declarant has died after declaration

123. Under which Section of Indian Evidence Act, opinion relating to relationship is relevant ?

(A) Section 45 (B) Section 46

(C) Section 32 (5) (D) Section 50

124. Which Court gave final Judgement in case of Pakala Narain Swami V/s Emperor ?

(A) Madras High Court

(B) Supreme Court

(C) Privy Council

(D) Federal Court

125. Which of following statement is not relevant in a case where A is tried for murder ?

(A) That A quarreled with dead person three days before incident

(B) That A has purchased a knife one hour before incident

(C) That A is a man of good character

(D) That A is a man of bad character

Answer key

1. (B)
2. (C)
3. (A)
4. (D)
5. (D)
6. (A)
7. (B)
8. (C)
9. (A)
10. (B)
11. (C)
12. (D)
13. (A)
14. (C)
15. (C)
16. (C)
17. (A)
18. (D)
19. (C)
20. (C)
21. (D)
22. (D)
23. (A)
24. (A)
25. (D)
26. (C)
27. (A)
28. (D)
29. (D)
30. (A)
31. (D)
32. (C)
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35. (D)
36. (B)
37. (A)
38. (D)
39. (A)
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41. (A)
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43. (B)
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122. (C)
123. (D)
124. (C)
125. (D)