REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 175 OF 2021
(ARISING OUT OF SLP (CRIMINAL) NO. 2898 OF 2020)

RAM VIJAY SINGH .....APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

Leave granted.

1. The present appeal has been preferred against the order dated 22.4.2020 passed by the High Court of Judicature at Allahabad. Vide the said order, the appeal filed by the appellant against his conviction for an offence under Section 302 read with Section 34 of the Indian Penal Code, 1860[1] was dismissed.

2. Before this Court, the appellant filed an application for bail, *inter alia*, on the ground that he was juvenile on the date of incident i.e.

1 For short, the 'IPC'

20.7.1982. In support of plea of juvenility, the appellant relied upon family register maintained by the Panchayat, Aadhaar Card and an order passed by the High Court in the year 1982. In the said order, the High Court had granted bail on the basis of the report of the Radiologist that the age of the appellant at that time was between 15½ - 17½ years. The appellant has further stated that he had moved criminal miscellaneous application raising a claim of him being a juvenile at the time of commission of offence before the High Court but the said application was not decided and the appeal has been dismissed on merits.

3. Keeping in view the said assertion raised by the appellant, this Court passed the following order on 20.7.2020:

> "Having heard Shri Pranav Sachdeva, learned counsel for the petitioner, for some time, we are of the view that the miscellaneous application that was filed in 2015 raising the claim of the petitioner's juvenility at the time of the office which has still not been decided, be decided within a period of four weeks from today by the High Court and if possible, judgment on the same be delivered within two weeks thereafter.
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> Adjourned.
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> Liberty to mention."

4. It is thereafter, the High Court had sought the report of the Medical Board. Such Medical Board consisting of five doctors comprised of (1) Professor A.A. Mehdi, Chief Medical Superintendent, G.M. and Associated Hospitals, Lucknow, (2) Dr. Mausami Singh, Addi-

tional Professor, Forensic Medicine & Texicology, (3) Dr. Garima Sehgal, Associate Professor, Department of Anatomy, (4) Prof. Pavitra Rastogi, Department of Periodontology, King George's Medical University and (5) Dr. Sukriti Kumar, Assistant Professor, Department of Radiodiagnosis, KGMU, UP, Lucknow. The Medical Board, in its report submitted on 8.9.2020 to the High Court opined that the age of the appellant is between 40-55 years. The State and the informant objected to the report. Further, there was also a mention of a single barrel gun granted to the appellant on 24.7.1982, a couple of days after the occurrence of the incident. However, the High Court on the basis of the medical report submitted its order to this Court stating that the appellant was juvenile on the date of commission of the offence. The conclusions drawn by the High Court reads thus:

> "43. We were impressed by aforesaid submission at the first flush particularly in the light of observations made in ***Mukarrab & Ors.*** v. ***State of Uttar Pradesh***[2] wherein the Court rejected the age determination report prepared by All India Institute of Medical Sciences (AIIMS) New Delhi, but upon deeper scrutiny, we do not find any force in this submission. The facts in Mukarrab's case were very clinching which is not the case here. In the present case, except for the fact that accused-appellant was issued a gun license on 24.7.1982 which is after the date of occurrence i.e. 20.7.1982, nothing else has been brought on record. The same may create a suspicion. But suspicion howsoever strong cannot take the place of proof. Perusal of the objections filed by informant does not indicate the grounds on which the member of the Medical Board is sought to be examined and secondly, no such material has been

2 (2017) 2 SCC 210

> appended along with the objections filed by informant on the basis of which prima facie we could feel satisfied to summon a member of Medical Board. We accordingly, negate the submission urged by learned counsel for informant to summon a member of Medical Board for cross-examination.
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> 44. Having dealt with the conflicting claims of the parties, the swinging circumstances of the case and the law as laid down **Mukarrab and Others (Supra)**, we find that the medical report dated 18.9.2020 is worthy of acceptance, wherein the age of accused-appellant-2 Ram Vijai Singh has been determined as 40-55 years on date. The occurrence took place on 20.7.1982 i.e. 38 years ago. When age of accused-appellant-2 Ram Vijai Singh is determined on all hypothetical calculations i.e. (55-38=17 years) (40-38= 2 years) and taking the average of difference between maximum and minimum age i.e. 48-38 = 10 years, then the age of accused-appellant-2 Ram Vijai Singh falls below 17 years."

5. This Court on 13.1.2021 directed the learned Advocate appearing for the State to produce all original documents with regard to the Gun Licence in question. In pursuance of the said direction, the State filed an application submitted on behalf of the appellant to seek the Arms Licence. In Column 2 of the application, the appellant has provided his date of birth as 30.12.1961. Such application was filed on or around 21.12.1981 wherein a police report was submitted on 28.3.1982 stating that no criminal case was registered against the appellant. It is on that basis, the application for Arms Licence was processed and the Area Magistrate approved the grant of Licence. The Arms Licence was hence granted on 24.7.1982, that is after the date of incident.

6. With this factual background, the question of juvenility of the appellant as on the date of incident, i.e., 20.7.1982 is required to be examined.

7. There is no dispute that the plea of juvenility can be raised at any stage even after finality of the proceedings before this Court. In the present case, the appellant has raised the plea of juvenility before the High Court vide Criminal Miscellaneous Application No. 382916 of 2015. This Court in a judgment reported as **Abuzar Hossain *alias Gulam Hossain*** v. ***State of West Bengal***[3] held as under:

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

8. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000[4] contemplated that whenever a claim of juvenility is raised before any Court, the Court shall make an inquiry and take such evidence as may be necessary. In terms of the provisions of the 2000 Act, the Juvenile Justice (Care and Protection of Children)

3 (2012) 10 SCC 489
4 For short, the '2000 Act'

Rules, 2007[5] have been framed. Rule 12 of the Rules contemplates a procedure to be followed for determination of age. The 2000 Act has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015[6]. Section 9(2) of the Act is the analogous provision to Section 7-A of the 2000 Act. The procedure for determining the age is now part of Section 94 of the Act which was earlier part of Rule 12 of the Rules. Section 94 of the Act reads thus:

> "Section 94. Presumption and determination of age
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> (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.
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> (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-
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> (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;
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> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
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> (iii) and only in the absence of (I) and (ii) above, age shall

5 For short, the 'Rules'
6 For short, the 'Act'

> be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:
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> 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.
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> (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 true age of that person."

9. The judgment in ***Abuzar Hossain*** considered Section 7-A of the Act and Rule 12 of the Rules. A perusal of Rule 12(3)(b) of the Rules shows that in the absence of documents as mentioned in clause (i), (ii) or (iii), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. It was further provided that in case wherein the exact assessment of the age cannot be done, the Court or the Juvenile Justice Board, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. However, it is to be noted that Section 94 of the Act does not have any corresponding provision of giving benefit of margin of age.

10. Admittedly, in the present case, there is no Date of Birth Certificate from the school or matriculation or equivalent certificate or a Birth Certificate given by a Corporation or Municipal Authority or

Panchayat. Therefore, clause (iii) of Section 94(2) of the Act to determine the age by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board comes into play.

11. Mr. Gopal Sankaranarayanan, learned senior counsel appeared on behalf of the appellant, argued that the accused was given bail by the High Court keeping in view his age as 15½ - 17½ years in the year 1982. Therefore, the appellant has to be treated as a juvenile in the light of the said order. It was contended that even considering the maximum age as 55 years as per the Medical Report now submitted, the appellant would still be less than 18 years on the date of incident. It was also argued that procedure as contained in Rule 12(3)(b) of the Rules is now part of Section 94 of the Act. Therefore, once the statute has provided ossification test as the basis of determining juvenility, the findings of such ossification test cannot be ignored.

12. Mr. Goel, on the contrary, argued that procedure as provided under Rule 12(3)(b) of the Rules is not materially different from that contained in the Statute. In fact, the discretion given to the Court to lower the age by one year in the Rules has been omitted. He further relied upon a judgment of this Court in ***Mukarrab*** wherein it has been held that the Courts have observed that the evidence

afforded by radiological examination is a useful guiding factor for determining the age of a person but the evidence is not of a conclusive and incontrovertible nature and is subject to a margin of error. Medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with other circumstances. It was further held that the ossification test cannot be regarded as conclusive when the appellants have crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. It was held as under:

> "26. Having regard to the circumstances of this case, a blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion by the radiological examination. At p. 31 of *Modi's Textbook of Medical Jurisprudence and Toxicology*, 20th Edn., it has been stated as follows:
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> "In ascertaining the age of young persons radiograms of any of the main joints of the upper or the lower extremity of both sides of the body should be taken, an opinion should be given according to the following Table, but it must be remembered that too much reliance should not be placed on this Table as it merely indicates an average and is likely to vary in individual cases even of the same province owing to the eccentricities of development."
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> Courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person but the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error. Medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with

other circumstances.

27. In a recent judgment, *State of M.P.* v. *Anoop Singh,* (2015) 7 SCC 773 : (2015) 4 SCC (Cri) 208], it was held that the ossification test is not the sole criteria for age determination. Following *Babloo Pasi* [*Babloo Pasi* v. *State of Jharkhand*, (2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266] and *Anoop Singh cases* [*State of M.P.* v. *Anoop Singh*, (2015) 7 SCC 773 : (2015) 4 SCC (Cri) 208], we hold that ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. In fact in the medical report of the appellants, it is stated that there was no indication for dental x-rays since both the accused were beyond 25 years of age.

28. At this juncture, we may usefully refer to an article "A study of wrist ossification for age estimation in paediatric group in Central Rajasthan", which reads as under:

"There are various criteria for age determination of an individual, of which eruption of teeth and ossification activities of bones are important. Nevertheless age can usually be assessed more accurately in younger age group by dentition and ossification along with epiphyseal fusion.

[Ref.: *Gray H. Gray's Anatomy*, 37th Edn., Churchill Livingstone Edinburgh London Melbourne and New York: 1996; 341-342];

A careful examination of teeth and ossification at wrist joint provide valuable data for age estimation in children.

[Ref.: *Parikh C.K. Parikh's Textbook of Medical Jurisprudence and Toxicology*, 5th Edn., Mumbai Medico-Legal Centre Colaba: 1990; 44-45];

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> Variations in the appearance of centre of ossification at wrist joint shows influence of race, climate, diet and regional factors. Ossification centres for the distal ends of radius and ulna consistent with present study vide article "*A study of wrist ossification for age estimation in paediatric group in Central Rajasthan*" by Dr Ashutosh Srivastav, Senior Demonstrator and a team of other doctors, Journal of Indian Academy of Forensic Medicine (JIAFM), 2004; 26(4). ISSN 0971-0973].
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> 29. In the present case, their physical, dental and radiological examinations were carried out. Radiological examination of skull (AP and lateral view), sternum (AP and lateral view) and sacrum (lateral view) was advised and performed. As per the medical report, there was no indication for dental x-rays since both the accused were much beyond 25 years of age. Therefore, the age determination based on ossification test though may be useful is not conclusive. An x-ray ossification test can by no means be so infallible and accurate a test as to indicate the correct number of years and days of a person's life."

13. We do not find any merit in the arguments advanced by the appellant. The medical report in support of the bail order is not available. Such order granting bail cannot be conclusive determination of age of the appellant. It was an interim order of bail pending trial but in the absence of a medical report, it cannot be conclusively held that the appellant was juvenile on the date of the incident.

14. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine

the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of Section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules.

15. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. This Court in ***Arjun Panditrao***

Khotkar v. ***Kailash Kushanrao Gorantyal and Ors.***[7] held, in the context of certificate required under Section 65B of the Evidence Act, 1872, that as per the Latin maxim, *lex non cogit ad impossibilia,* law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.

16. Apart from the said fact, there is an application submitted by the appellant himself for obtaining an Arms Licence prior to the date of the incident. In such application, he has given his date of birth as 30.12.1961 which would make him of 21 years of age on the date of the incident i.e. 20.7.1982. The Court is not precluded from taking into consideration any other relevant and trustworthy material to determine the age as all the three eventualities mentioned in sub-section (2) of Section 94 of the Act are either not available or are not found to be reliable and trustworthy. Since there is a document signed by the appellant much before the date of occurrence, therefore, we are of the opinion that the appellant

7 (2020) 7 SCC 1

cannot be treated to be juvenile on the date of incident as he was more than 21 years of age as per his application submitted to obtain the Arms Licence.

17. On merits, the argument of the appellant was that Girendra Singh, the brother of the deceased, was not examined by prosecution though as per Ram Naresh Singh (PW-1), he was walking few steps behind the deceased. It was further argued that as per PW-1 Ram Naresh Singh, Dhruv Singh had used *Barchhi* as lathi, though the first version was that Dhruv had used *Barchhi*. The argument was that Ram Naresh Singh (PW-1) has been disbelieved qua the role of Dhruv Singh and hence cannot be relied upon in determining the role of the appellant.

18. We do not find any merit in the arguments raised by the learned counsel for the appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim *Falsus in Uno, Falsus in Omnibus* is not the rule applied by the courts in India. This Court recently in a judgment reported as ***Ilangovan*** v. ***State of T.N.***[8] held that Indian courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under:-

> "11. The counsel for the appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present

8 (2020)10 SCC 533

accused must also be discarded. The counsel is, in effect, relying on the legal maxim "falsus in uno, falsus in omnibus", which Indian courts have always been reluctant to apply. A three-Judge Bench of this Court, as far back as in 1957, in *Nisar Ali* v. *State of U.P.* [*Nisar Ali* v. *State of U.P.*, AIR 1957 SC 366 : 1957 Cri LJ 550] held on this point as follows: (AIR p. 368, paras 9-10)

"9. It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim *falsus in uno, falsus in omnibus* was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. *This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded*. One American author has stated:

'... the maxim is in itself worthless; first in point of validity ... and secondly, in point of utility because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore, it is a superfluous form of words. It is also in practice pernicious....' [*Wigmore on Evidence*, Vol. III, Para 1008]

10. The *doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances but it is not what may be called "a mandatory rule of evidence*"."

(emphasis supplied)

This principle has been consistently followed by this Court, most recently in *Rohtas* v. *State of Haryana* [*Rohtas* v. *State of Haryana*, (2019) 10 SCC 554 : (2020) 1 SCC (Cri) 47] and needs no reiteration."

19. Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity. Therefore, non-examination of Girendra Singh cannot be said to be of any consequence.

20. The other accused, who was convicted apart from the appellant is Shiv Vijay Singh, was armed with an axe. Dr. Shyam Mohan Krishna (PW-4) has conducted the postmortem examination and reported the following injuries:

> "1. Contusion 4 cm. x 2 cm. on back of left ear on temporal region.
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> 2. Contusion 4 cm. x 1 cm. on left side below Inj. no. 1 oblique.
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> 3. Lacerated wound 3 cm. x 1 cm. x bone deep placed on back near occipital region on back of left ear.
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> 4. Contusion 2 cm. x 1 cm. on left side of frontal region of scalp above left Eye brow.
>
> 5. Contusion 2 cm. x 2 cm. on middle of left Eye brow.
>
> 6. Contusion 4 cm. x 2 cm. at chin.

7. Contusion 6 cm. x 2 cm. on left side of neck, oblique in middle.

8. Contusion 5 cm. x 2 cm. on apex of left shoulder.

9. Incised wound 6 cm. x 2 cm. bone deep on left cheek upper part oblique.

10. Incised wound 4 cm. x 2 cm. bone deep placed on left cheek below Inj. no. 9.

11. Abrasion left side of chest lower part ant. aspect 5 cm. x 4 cm.

12. Contusion 3 cm. x 1 cm. on left axilla on anterior axillary fold.

13. Contusion 8 cm. x 2 cm. on left upper arm on lateral aspect oblique.

14. Incised wound 5 cm. x 2 cm. on dorsum of left wrist in middle.

15. Abrasion 10 cm. x 8 cm. on back left side upper part.

16. Contusion 6 cm. x 2 cm. oblique on left side of chest lower part near Inj. no. 11."

21. The oral evidence along with the statement of Dr. Shyam Mohan Krishna (PW-4) suggest that the injuries on the head of the deceased were caused by a blunt weapon. The blunt weapon as deposed by the eyewitness is the lathi in the hands of the present

appellant. Lathi may be common article with the villagers but the use of lathi as a weapon of offence is a finding of fact recorded by the Courts below.

22. As per the postmortem report, the deceased suffered multiple injuries which shows attack by more than one person. The nature of injuries also shows that hard and blunt object as well as sharp edged weapons were used to inflict injuries. It is the appellant who was armed with *Lathi* whereas the other convicted accused Shiv Vijay Singh was armed with *Axe*. The incised wound suffered by the deceased was possible with an *Axe*. As per the report, there are sufficient number of injuries caused by an Axe and Lathi on the person of the deceased.

23. However, the learned trial court as well as the High Court had appreciated the entire evidence to return a finding of guilt against the appellant.

24. Therefore, we do not find any merit in the present appeal. The same is hereby dismissed.

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(HEMANT GUPTA)

.....J.
(B.R. GAVAI)

NEW DELHI;
FEBRUARY 25, 2021.