

In the Court of Additional District Judge, 2nd Fast Track Court, Alipurdaur

Present : Sri Pukar Pradhan

Addl. District Judge, 2nd Fast Track Court, Alipurdaur

J.O. Code No. WB 01097

SC 132/2013, ST No. 49/2015 dt. 12.08.2015

CIS No. 237/2015

Order No.106

dt.23.06.2026

Today is date fixed for passing order.

Ld. Advocate for the convict files hazira.

In view of the directions of Hon'ble High Court at Calcutta at Circuit Bench at Jalpaiguri in **CRA (DB) 1 of 2023** and **CRAN 1 of 2023** in the matter of **Krishna Saha Turaha @ Krishna Turaha appellant Vs. State**. The matter is taken up for hearing and passing necessary order. Hon'ble Court vide its order dated **07.06.2023** was pleased to dispose of the matter on the ground urged by the appellant that he was juvenile on the date of commission of offence and the issue has not been raised during trial and the Hon'ble Court was pleased to note that the appellant disclosed the document i.e the school certificate in respect of his claim of juvenility, as such Hon'ble Court returned the matter to this court with the direction to determine the said issue upon establishing the authenticity of the document produced by the appellant to the effect that whether the same confirms to the documents as contemplated in **Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007**. In the light of the judgment of Hon'ble Apex Court in **Chaddu @ Sailash Vs. State of Uttar Pradesh** reported in **2019 (15) SCC 19**.

In pursuant to the solemn order of the Hon'ble Court the following orders are passed.

A). Case Summary:-

The original judgment was pronounced on **05.12.2022**, thereby Convicted the accused Krishna Saha Turaha u/s 363 and Sec. 376(2)(i) of the IPC and sentenced him to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 20,000/- for the punishable u/s 376(2)(i) of the IPC. The convict was further sentenced to suffer rigorous imprisonment for three years and fine of Rs. 10,000/- for the offence punishable u/s 363 of IPC.

B). Date of offence:- 17.11.2011.

The case record such that the case was instituted on the basis of written complaint lodged before Jaigaon PS on 25.12.2011, which was registered as Jaigaon PS case no. 308/2011 against six accused persons. Thereafter, prosecution examined as many as nine witnesses and considered

seven documents to arrive at conclusion. Thereafter, my predecessor in chair vide its Judgment dated 05.12.2022 was pleased to convict the accused Krishna Saha Turaha. Against such order of conviction, the convict Krishna Saha Turaha preferred an appeal before Hon'ble High Court at Calcutta, Circuit Bench at Jalpaiguri which was registered as **CRA (DB) 1 of 2023** and **CRAN 1 of 2023** respectively.

Upon compliance to the order of Hon'ble Court, my predecessor in chair was pleased to pass an elaborate order being order **no. 84 dated 16.02.2024**, whereby court considered the documents so collected by the investigating officer from St. Dominic School, Jaigaon, certified copy of admission register of convict Krishna Saha Turaha from B.D Memorial School, Jaigaon, copy of ration card, PAN card, Aadhaar card and voter card. My predecessor in-chair was of the view that the date of birth as recorded in the school admission register was **11.10.1991**, in the one hand, where as ration card, PAN card and Aadhaar card shows the date of birth of the convict as **15.04.1994**. Hence, to rule out the doubt, an order of ossification test of the convict was passed. Hence, the ossification test was accordingly held at Alipurduar District Hospital.

C). The report of the ossification test:-

In compliance of the said order, the medical officer of Alipurduar conducted the bone ossification test in compliance to order no. 84 dated 16.02.2024 and the report was received on 27.02.2024 and **the Medical Board assess the age of the convict between 30-40 years on the date of examination.**

D). Legal Provision Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007 lays down as follows:-

The issue of determination of juvenility is no longer res integra. **Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007** prescribes the procedure and hierarchy of evidence for determination of age. **Rule 12(3)** reads as follows:

"(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

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

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

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

(b) and only in the absence of either (i), (ii) or (iii), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.”

Thus, Rule **12(3)** creates a statutory hierarchy of evidence for determination of age. The Court is required to first consider the matriculation or equivalent certificate, if available. In its absence, the Court is to consider the date of birth certificate from the school first attended, followed by the birth certificate issued by a municipal authority or panchayat. Only where the documentary evidence contemplated under **Rule 12(3)(a)** is unavailable or otherwise found incapable of inspiring confidence can the Court resort to medical opinion by way of ossification or other recognized methods of age determination.

At this outset, the court considered it necessary to determine whether the document i.e the academic examination result (secondary) issued by the National Institute of Open School is authentic or not. In that regard, several correspondence were made to the **National Institute of Open School, Regional Center, Kolkata**, but no such authenticated report was received, which is reflected at **order no. 96 dated 09.01.2025 to order no. 103 dated 01.04.2026**. Despite of several communication, it bore no fruitful result. On the other hand, while determining the academic examination result issued by the National Institute of Open Schooling is itself a document contemplated in **Rule 12(3)(a)(1) of Juvenile Justice Rule**. The rule prefers to matriculation or equivalent certificate. It does not employ the expressions “marksheet”, “Statement of marks”, “academic result” or “examination result”. Thereafter, before such documents can claim the statutory preference contemplated under **Rule 12(3)**, the court must be first satisfied that it is indeed the equivalent certificate envisaged by the Rule and not merely a statement of examination results.

Hon’ble Supreme Court has consistently held that mere production of a document falling within one of the category mentioned in **Rule 12** does not automatically establish the age of the accused, the court remains in a doubt to examine the authenticity, reliability and evidentiary value of the document before accepting it.

In **Abuzar Hossain @ Gulam Hossain v. State of West Bengal, (2012) 10 SCC 489**, the Hon’ble Supreme Court observed that the school leaving certificate relied upon by the accused had been “procured after his conviction” and further held that “the credibility and/or acceptability of the

documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be *prima-facie* accepted or rejected.

In **Chaddu @ Shailesh v. State of Uttar Pradesh, (2019) 15 SCC 19**, the Hon'ble Supreme Court considered the applicability of **Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007** in determining the claim of juvenility and proceeded in accordance with the hierarchy of evidence prescribed under **Rule 12(3)**. The decision recognizes that, in terms of **Rule 12(3)(b)**, medical opinion is to be obtained only in the absence of the documentary evidence contemplated under **Rule 12(3)(a)**.

Similarly Section **94 (2) of JJ Act** provides for the mode of determination of age. In the order of priorities, the date of birth certificate from the school stands at the highest pedestal whereas ossification test has been kept at the last rung to be considered [**Vinod Katara v. State of Uttar Pradesh, (2024) 4 SCC 150**].

E). Regarding NIOS certificate:-

The photocopy of the document of Krishna Saha Turaha being enrollment no. 220091102135 has been produced before the court, which shows the date of birth of Krishna Saha Turaha as 15.04.1994, but unfortunately it's authenticity could not be established when the same was sent before the **Director of National Institute of Open Schooling, Regional Center, Kolkata, Diamond Harbour Road**. On the other hand, the investigating Officer ASI Biswadip Barman submitted a written report alongwith the certificate dated 13.03.2025 issued by the **Principal of B.D Memorial English High School** to the effect that Krishna Saha Turaha, s/o Lalan Turaha got admitted in the institute on 13.03.2007 and as per the admission register, his date of birth is **11.10.1991**.

Under the above predicament and upon considering **Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007** as well as upon considering the observation of Hon'ble Apex Court and applying the aforesaid principle to the facts of the present case, this court finds that the academic examination result (secondary) issued by the National Institute of Open Schooling which shows the date of birth of the convict as 15.4.1994 remained **unauthenticated** in one hand and in the other hand, the said document was relied by the convict only after his conviction by this court for

the first time. It is seen that the document was never produced during investigation or during trial. On the contrary upon perusal of the original case record, it is further detected that at the time of moving **bail application the plea of juvenility was raised and Learned Additional Chief Judicial Magistrate was pleased to call for report regarding the verification of the documents vide order dated 9.1.2012.** To that effect, the Investigating Officer has verified all the documents inclusive of student identity card issued by regional director of national institution of Open schooling, School admission register of BD memorial English High School, St. Dominic High School and submitted report on 22.01.2012 along with original school certificates and copy of admission register which shows the date of birth as **11.10.1991.**

The certificate issued by the respective School authorities as well as the photocopy of admission register issued during the investigation consistently shows the date of birth of Krishna Prasad @ Krishna Turaha, s/o- Lalan Prasad @ Lalan Turaha is 11.10.1991. These documents possesses more evidentiary value and stands in high pedestal as per **Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rule 2007.**

The identity of the convict also stands sufficiently established from the school records. Notwithstanding, the minor variation in the surname being recorded as 'Prasad' in some documents and 'Turaha' in some documents, but the 'father's name' and other identity particulars correspond the documents like Aadhar Card, PAN Card and Voter Card etc as relied by the convict shows the date of birth as 15.4.1994, but these documents are not primary evidence of age determination under rule 12 (3) Juvenile Justice Rule.

The ossification test so conducted in pursuant to the order number 84 dated 16.2.2024 also does not supports the case of the convict as the medical board shows the age of the convict is between **30 to 40 years.** Although the medical opinion is only approximate and cannot supersede the reliability of the documentary evidence as school admission register. The assessment is consistent that the date of birth recorded in the contemporaneous school records prepared in ordinary course of business possesses greater evidentiary value and also finds supports under **Rule 12(3) of Juvenile Justice Rule.** Therefore, keeping in mind the above facts specially **Rule 12(3)** hierarchy strictly followed and accordingly, upon

evaluating the entire evidences so collected and are lying in the record. In the light of the principle laid down by the Hon’ble Apex Court, this court is satisfied that the contemporaneous school records and admission register reliably established the convicts date of birth is 11.10.1991 and consequently on the date of occurrence i.e on 17.11.2011 the convict had already attended more than 20 years of age and was not juvenile within the meaning of **Juvenile Justice and care and Protection Act.**

F). A table depicted hereinbelow, to show a birds eye view:-

Date of birth as per admission register	11.10.1991
Date of occurrence	17.11.2011
Age on the date of occurrence	More than 20 years
Juvenility stands	No juvenile
Plea of juvenility	Devoid on merit

The case is disposed off accordingly.
Update CIS. B.C to do the needful.

Dictated & corrected by me ;
sd/-
Addl. Sessions Judge,
Fast Track 2nd Court, Apd.

sd/-
Addl. Sessions Judge,
Fast Track 2nd Court, Apd.
(WB-01097)