

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No. 72 of 2019

Rajiv Kashyap

--Appellant

Versus

State Of Uttarakhand

--Respondent

Presence:-

Mr. Siddharth Bankoti, learned Legal Aid Counsel for the appellant.

Mr. B.N. Molakhi, learned DAG for the State.

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

The instant appeal has been preferred against judgment and order dated 18.09.2019, passed in Sessions Trial No.32 of 2014, State vs. Laturi Pandit and Others', by the court of 1st Additional Sessions Judge, Haldwani, District Nainital. By it, the appellant – Rajiv Kashyap has been convicted under Sections 302 & 201 of the IPC and sentenced as hereunder:-

- (i) Under Section 302 IPC- to undergo rigorous imprisonment for life with a fine of Rs.10,000/-. In default of payment of fine to undergo simple imprisonment for a further period of one year.
- (ii) Under Section 201 IPC- to undergo rigorous imprisonment for a period of three years with a fine of Rs.5,000/-. In default of payment of fine to undergo simple imprisonment for a further period of six months.

2. During pendency of the appeal, on 28.09.2021, a statement was given on behalf of the appellant that in the month of

October 2013, at the time of incident, his age was 17 years. On that date, on behalf of the appellant, it was also argued that appellant is neither literate nor does he have any document regarding his age.

3. On that date, the Court took note of the law laid down by the Hon'ble Supreme Court in the case of Abuzar Hossain *alias* Gulam Hossain vs. State of West Bengal, (2012) 10 SCC 489 and directed the Chief Medical Officer, Haridwar to conduct an ossification test of the appellant Rajiv Kashyap by a Medical Board and file the report of the Medical Board within two weeks. The ossification test report was received. Thereafter, on 10.06.2026, during hearing of the appeal, this Court, while noting the statement that was made on behalf of the appellant, requested Registrar (Judicial) of this Court to ascertain the date of birth of the appellant Rajiv Kashyap. The Court observed as follows:-

“We are of the view that the matter may be referred to the Registrar (Judicial) to ascertain the date of birth of the appellant Rajiv Kashyap.

The Registrar (Judicial) of this Court is requested to ascertain the date of birth of the appellant Rajiv Kashyap on the date of incident. The ossification test report is already available. Both the parties may be given opportunity and the State may through Investigating Officer or other mode bring material for consideration of the Registrar (Judicial).

The Registrar (Judicial) shall submit his report within four weeks.

List after four weeks alongwith connected matter.”

4. Now, the report has been received. The Registrar (Judicial) has concluded that on the date of incident, i.e. on 27.10.2013, the appellant was 17 years of age. In para 21 of the report, the Registrar (Judicial) has noted as below:-

“21. Accordingly, on the basis of the material available on record, the age of the applicant, Rajiv Kashyap, is presumed to be 17 years on the date of the alleged

offence/incident, i.e., 27.10.2013.”

5. Learned Legal Aid Counsel appearing for the appellant submits that in the instant case, the incident took place on 27.10.2013 and as per the report of Registrar (Judicial) on that date, the appellant was less than 18 years of age, he was a juvenile in conflict with law, therefore, he has been in custody for more than three years now, therefore he deserves acquittal.

6. Admittedly, the date of incident is 27.10.2013 and judgment of the trial court was delivered on 18.09.2019. On the date of incident, the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, “the JJ Act”) were in existence, and according to Section 7A of the JJ Act, the issue of juvenility may be raised at any stage or before any Court,

7. Learned State Counsel does not dispute the inquiry report.

8. In fact, determination of age may be done by a Court through Registrar (Judicial) of the Court. In an identical matter, in the case of *Raju vs. State of Haryana*, (2019) 14 SCC 401, the Hon’ble Supreme Court has directed the Registrar (Judicial) to conduct an inquiry. When the report was received, the Hon’ble Court observed in para nos.18 and 19 as follows:-

“18. Therefore, it is evident that the only inquiry as stipulated under the 2000 Act and the 2007 Rules was conducted by the Registrar (Judicial) upon the directions of this Court, after the Court was satisfied upon going through the school certificates adduced by the appellant that the certificates in question prima facie entitled him to claim the conduct of such an inquiry. In such a situation, the question regarding whether precedence may be given to the inquiry of a Registrar (Judicial) of this Court over the opinion of the High Court regarding the age of an accused can be restated as whether such inquiry conducted by the Registrar (Judicial) upon the direction of this Court, if thereafter affirmed by this Court, would amount to an inquiry conducted by this

Court itself. If this be the case, the findings of such inquiry would prevail over the view taken by the High Court, as is evident from the preceding discussion.

19. We are of the opinion that the above question must be answered in the affirmative. This Court, on previous occasions as well, has adopted the practice of directing the Registrar (Judicial) to conduct the inquiry in terms of Rule 12 of the 2007 Rules on behalf of this Court, and accepted the findings made therein [see *Dharambir v. State (NCT of Delhi)* [*Dharambir v. State (NCT of Delhi)*, (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274]]. Seeing that the Registrar (Judicial) is a District Judge serving on deputation at the Supreme Court, recourse to his or her assistance in the form of collecting evidence and arriving at a finding regarding the claim of juvenility of the person concerned may be undertaken by this Court in order to save its judicial time. However, it must be stressed that the findings in an inquiry conducted by the Registrar (Judicial) would not per se prevail upon a contrary view taken by the High Court. Only after this Court applies its judicial mind to such report with due regard to the confines of the procedure stipulated in Section 7-A of the 2000 Act and Rule 12 of the 2007 Rules, and only if it thereafter confirms the findings in such report would the same prevail upon a contrary view taken by the High Court which is not based upon any such inquiry.”

9. Section 7A of the JJ Act permits a person to raise the issue of juvenility at any stage. This Section reads as follows:-

“7A. Procedure to be followed when claim of juvenility is raised before any court-(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as and shall record a finding whether the person is a juvenile or a child or not, may be necessary (but not an affidavit) so as to determine the age of such person, stating his age as nearly as may be :

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

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to

have no effect.”

10. A perusal of the above provision makes it clear that the claim of juvenility can be raised before any Court at any stage even after final disposal of the case. In the instant case, it is done at the stage of appeal.

11. At the relevant time, the Juvenile Justice (Care and Protection of Children) Rules, 2007 (in short, “2007 Rules”) were in force. Rule 12 of it provides for determination of age, which reads as follows:-

“12. Procedure to be followed in determination of age.

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by 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) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side

within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7-A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

12. Rule 12 (3) (b) of the 2007 Rules makes it abundantly clear that in case, the age is determined by Medical Board, the Court may give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

13. In the instant case, there is no question of giving any benefit because according to the report, the age of the appellant is 17 years. No record was found with regard to age of the appellant. The ossification test of the appellant was conducted on 25.10.2021 and on that date, the age of the appellant was assessed at 25 years, which means, in the year 2013, he was 17 years of age. There is no objection to it.

14. This Court has no doubt that the inquiry conducted by Registrar (Judicial) amounts to an inquiry conducted by this Court and it is conclusive proof of the age of the appellant under the provisions of the JJ Act.

15. Accordingly, this Court records that on the date of incident i.e. 27.10.2013, the appellant was 17 years of age; he was definitely a juvenile, a juvenile in conflict with law. If a juvenile in conflict with law has been convicted with other accused and the situation arises like the instant one, what would be the option before the Court?

16. In a similar situation, in the case of Pawan Kumar vs. State of Uttar Pradesh and Others, 2023 (15) SCC 683, the appellant was held juvenile by the Hon'ble Supreme Court. That appellant had already undergone sentences along with other co-accused. Under those facts and circumstances, the Hon'ble Supreme Court upheld the conviction but quashed the sentences, and having considered the period of custody which the appellant in that case had undergone, he was released. In para nos.43, 44 and 45 of that judgment, the Hon'ble Supreme Court observed as follows:-

“43. Consequently, we accept the report of the Additional Sessions Judge, Barabanki dated 28-9-2022 and declare that the appellant was a juvenile on the date of the commission of crime i.e. on 1-12-1995.

44. The other two co-accused i.e. Gaya Prasad Mishra and Gulab Chandra have been convicted and sentenced inter alia to life imprisonment. Although both of them have been prematurely released by the State Government under its remission policy, yet the fact remains that they were convicted (along with the appellant), for the offences under Sections 302/34 and 307/34 by the trial court in trial as well as by the High Court in appeal after examining the entire evidence in detail. The role assigned to the present appellant is no different than the role assigned to the other

two accused who were convicted under Sections 302 and 307 read with Section 34IPC. It is exactly the same role and clearly Section 34 of the Penal Code is also attracted. We have already declared the appellant as a juvenile, but there is also an order of conviction against the appellant, which is based on the evidence placed by the prosecution against the other two accused and the present appellant, which is common. It is not possible therefore to take a different view for the present appellant than what has been taken by the trial court and the appellate court against the other two accused regarding their conviction. Therefore, we sustain the conviction of the appellant under Sections 302 and 307IPC read with Section 34IPC, but all the sentences which have been awarded to him are hereby quashed as such sentences cannot be given to a juvenile, in view of Section 16 of the Juvenile Justice Act, 2000.

45. The appeal is partly allowed on the question of juvenility as indicated hereinabove, and the order [*Gaya Prasad Mishra v. State of U.P.*, 2019 SCC OnLine All 7473] of the High Court will stand modified to this extent. The appellant is presently in jail. He should be around 43 years of age as of now. Considering all the relevant aspects including the fact that the appellant has already been declared a juvenile by this Court and in view of Sections 15 and 16 of the Juvenile Justice Act, 2000, since the maximum period for which a juvenile can be detained is three years and the appellant has already undergone imprisonment for 4½ years, we hereby order that the appellant be released forthwith, unless he is required in some other crime.”

17. In the instant case, the appeal has been preferred by the appellant and others. They have been convicted and sentenced accordingly. Therefore, this Court has no option but to sustain the conviction of the appellant – Rajiv Kashyap under Sections 302 & 201 of the IPC, but all the sentences which have been awarded to him are to be quashed because as such those sentences cannot be given to a juvenile in conflict with law in view of Section 15 of the JJ Act.

18. Accordingly, the conviction of the appellant - Rajiv Kashyap under Sections 302 & 201 of the IPC is upheld, but the

sentence imposed upon is quashed. The appellant is already on bail, his bail bonds are cancelled and sureties are also discharged. He need not surrender. The appellant shall be entitled to the benefit of Section 19 of the JJ Act.

(Siddhartha Sah, J.)
29.09.2026

JKJ/Akash

(Ravindra Maithani, J.)
29.09.2026