

# AGE DETERMINATION UNDER POCSO ACT

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# CHALLENGES

- No registration of birth.
- Parents give wrong date of birth at the time of admission in school.
- Often they give different dates of birth in different schools.
- Schools do not maintain registers properly.
- Often age is recorded on the basis of guess work.
- Documents of younger child are used to show lesser age. .

# BRIJ MOHAN VS PRIYABRAT AIR 1965 SC 282

- ▶ Section 35 of The Indian Evidence Act 1872 would be attracted if entry is made by the public servant himself in a public or other official book.
- ▶ In actual life false statement of age is made by parents to secure advantage at latter stage. Explanation that incorrect date was carried in school record was accepted.

# UMESH CHANDRA VS RAJASTHAN AIR1982 SC 1057

A three judge bench of SC observed that it is not uncommon for parents to change the age of their children in order to get some benefit either for appearing in examination or entering a particular service.

# DAYA CHAND VS SAHIB SINGH (1991) 2 SCC 438

- ▶ Two different Dates of birth were recorded in two different schools. SC held that Medical report was to be relied upon.
- ▶ In this case medical report was of definitive nature which said that age was not less than 20 years on the date of examination.
- ▶ Tendency of many to have lesser age recorded in school is well known.

# VISHNU Vs MAHARASTRA (2006) 1 scc 283

- There were two dates of births of the prosecutrix- one 29-11-1964, recorded in Municipal Corporation and register of Hospital where she was born and 29-06-1963, recorded in School Leaving Certificate Of Khar Upper Municipal School.
- SC Observed that it is common knowledge that parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission in school.

# BIRADMAL SINGHVI VS ANANDPUROHIT AIR 1988 SC 1796

- ▶ Formal proof of a document and probative value thereof are not the same thing.
- ▶ Probative value of a document depends on the source of information on the basis of which entry has been made by the public servant in the public record.
- ▶ Relied in *Sushil Kumar vs Rakesh Kumar* AIR 2004 SC 230.

# GOPI NATH GHOSE VS STATE OF W.B (1984) Supp SC 228

- ▶ Plea of juvenility was raised for the first time before the Apex court
- ▶ SC did not allow the technical objection that the plea could not be raised for the first time before the SC in view of the beneficial provision of WB Children Act read with Article 39(f) of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity.



# PRADEEP KUMAR VS STATE OF UP 1995Supp(4)SCC419

- ▶ A three judge bench of SC accepted High School Certificate, Horoscope and medical opinion as acceptable proof of age in the fact and circumstances of the case. Benefit of Children Act was given.

# BHOOPRAM VS STATE OF UP (1989) 3 SCC 1

- ▶ Sessions Judge who was directed to return a finding on age of appellant relied on medical opinion and did not accept the School Leaving Certificate according to which appellant was less than 16 years of age on the date of occurrence.
- ▶ SC held That certificate carried definite a date of birth against which there was no material. Brij Mohan Singh's case not cited.

# BHOLA BHAGAT VS STATE OF BIHAR (1997) 8 SCC 720

- ▶ Statement of accused under section 313 Cr P C and assessment of age by trial judge was accepted as valid proof of age in absence of any challenge by the state either in HC or in SC.
- ▶ Held-if HC doubted assessment of age an enquiry could be ordered. St of Haryana vs Balwant Singh 1993Supp SCC 1 was held not to be a good law.

# RAM DEO CHAUHAN VS ASSAM AIR 2001 SC 2231

- ▶ School records were not accepted because the source of information regarding date of birth was not proved. Register was not properly maintained.
- ▶ Even medical report according to which age could be around 16 years was not accepted.

# RAVINDRA SINGH GORKHI VS UP AIR2006 SC 2157

- ▶ In view of S.35 of Evidence Act different standard cannot be applied in a civil or a criminal case.
- ▶ School Leaving Certificate cannot be used unless all the ingredients of S 35 are established.
- ▶ Benefit can be given to those only who are in fact juvenile.

# BABLOO PASI Vs JHARKHAND 2008(13)SCALE 137

- ▶ Age mentioned in voter list was accepted by first appellate court against order of JJ Board.
- ▶ Held- unless proved in accordance with S.35 of Evidence Act it cannot be acted upon in view of BiradMal Singhvi's case and other cases inline.

# JITENDRA RAM VS JHARKHAND 2006 Cri L J 2464(SC)

- ▶ SC sounded a note of caution that BHOLA BHAGAT case does not mandate that a person who is in fact not a juvenile should be given the benefit simply because such a plea has been raised.
- ▶ This case has been referred with approval in Ravindra Singh Gorkhi's and Babloo Pasi's cases.

# JYOTI PRAKESH VS BIHAR

## AIR 2008SC 1696

- ▶ Referred with approval Ravindra Singh Gorkhi and Jitendra Singh's case.
- ▶ Medical opinion was accepted over school certificates which appeared to be forged.
- ▶ Held -each case should be judged on its own merits.
- ▶ Benefit be not given simply because plea has been raised.



# PAWAN vs UTTARANCHAL (2009)15 SCC 259

- ▶ Juvenility was claimed on the basis of School leaving certificate and statement u/s 313 CrPC. SC held that since no plea was raised in trial court or the High Court and School certificate was obtained after conviction it was not accepted even for directing an enquiry.
- ▶ Statement u/s 313 is hardly determinative of age.

# HARIRAM VS RAJASTHAN (2009)13 SCC211

- ▶ Juvenile law is meant to be different from adult justice system.
- ▶ Law is rehabilitatory and not adversarial.
- ▶ Difference yet to be appreciated.
- ▶ All persons below 18 at the time of commission of offence are entitled to benefit.
- ▶ Plea can be raised at any stage even after completion of trial.

# RAJU VS HARYANA (2010)3 SCC 235

- ▶ Mark Sheet (and not the matriculation certificate) wherein date of birth was recorded was accepted as proof of age.
- ▶ State did not dispute the fact of juvenility.
- ▶ Whether an authority for proposition that mark sheet is valid piece of evidence to prove age?

# SHAH NAWAZ VS UP AIR 2011 SC 3107

- ▶ Relying on Raju's case it was held that Mark sheet is a valid proof of age.
- ▶ Further held that School Leaving Certificate is also valid proof of age.
- ▶ In this case School Leaving Certificate was proved by clerk and School Leaving Certificate of another school also contained same date of birth.

# OM PRAKESH VS RAJASTHAN 1012 (4) SCALE 348.

- ▶ Accused Vijai @banwaroo studied in two schools with two different dates of birth.
- ▶ In one school his name was Vijai and in the other his name was Bhanwar Lal.
- ▶ He explained his own school records according to which he was major by saying that it was of his elder brother.
- ▶ SC held that if school record is ambiguous then medical opinion can be relied on.

# ASWANI KUMAR SAXENA vs MP (2012)9SCC 750

- ▶ Nature of enquiry explained.
- ▶ JJB must conduct inquiry “by seeking evidence by obtaining”
- ▶ Exclusionary rule applies.
- ▶ JJB not to conduct a roving enquiry and go beyond certificate unless established that the certificate was obtained by fraud or manipulation.

# SUNIL VS STATE OF HARYANA (2010) 1 SCC742

- ▶ School leaving certificate was not accepted as proof of age because the same was obtained after the incident, admission form was not filed and brother of the prosecutrix who accompanied her at the time of admission was not examined.
- ▶ Birad Mal Singhvi's case was relied on and it was held that since school record was not proved as mandated in Birad Mal Singhvi's case, it could not be used to prove age of the prosecutrix.
- ▶ Medical report was also not accepted because ossification test was not done despite reference by the doctor who clinically examined the prosecutrix.

# State of MP VS MUNNA@SHAMBHOO (2016) 1SCC 696

- ▶ School certificate was not believed because the principal of school could not say on what basis the date of birth was recorded in school register and what date was declared by the girl at the time of her admission.
- ▶ Ossification test report was also not believed because the doctor who conducted the test was not examined.
- ▶ SC relied on Birad Mal Singhvi's case to come to the conclusion that the prosecution was unable to prove that the prosecutrix was less than 16 years of age.



# JARNAIL SINGH VS STATE OF HARYANA (2013) 7 SCC 263

- ▶ Rule 12 of JJ Rules will apply in determining the age of child victim of the crime.
- ▶ SC observed “in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime.” and therefore “it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix”
- ▶ Case of Sunil vs State of Haryana, AIR 2010 SC 392. was distinguished on the ground that Rule 12 of JJ Rules was not taken into account in that case.

# STATE OF MP VS ANOOP SINGH (2015) 7 SCC 773

- ▶ Accused was convicted for offence u/ss 363,366/376 IPC. HC acquitted him on the ground that the prosecution failed to prove that the prosecutrix was less than 16 years of age.
- ▶ HC relied on medical opinion and discarded Birth certificate and middle class school certificates on the ground that there was difference of two days in these tow certificates.
- ▶ SC held that Rule 12 would apply and medical opinion could be looked into only in absence of documents referred to in Rule 12 JJ Rules 2007.

# MAHADEO VS MAHARASHTRA (2013)14 SCC 637

- ▶ Age of the prosecutrix was assessed on the basis of certificate issued by the first school attended, admission form and School leaving certificate issued by subsequent school where she studied.
- ▶ The Doctor who examined the prosecutrix opined that her age could be 17 to 25 years old.
- ▶ The SC held that the doctor's opinion was not to be relied in view of school records.
- ▶ SC categorically reiterated that Rule 12(3) of JJ Rule would apply in case of age determination of the prosecutrix in criminal cases.

# Sri Ganesh vs State Of Tamil Nadu

## 6 January, 2017

- ▶ Age of the accused was determined on the basis of school certificate and the matter was directed to be placed before the JJ Board.
- ▶ The HC remanded the matter with the observation that medical opinion on the issue of age was not considered by the trial court.
- ▶ SC held that the procedure has been clarified in Ashwani Kumar saxena's case and there was no occasion to consider medical opinion when on the basis of documents issue could be decided .

# KULAI IBRAHIM VS STATE

## DOD 03 07 2014

- ▶ Father of accused after conviction from HC obtained a forged school certificate to show accused a juvenile and also obtained birth certificate from City Municipal Corporation by order of Judicial Magistrate.
- ▶ SC directed the trial court to complete trial of case regarding fake certificates and kept pending the issue of juvenility.

# MUKARRAB VS STATE OF UP

## 2016 SCC OnLine SC 1413

- ▶ A case on admissibility and reliability of medical opinion in age determination enquires.
- ▶ The medical board of AIIMS doctors opined that the accused were in the range of 35-40 years on the date of medical examination.
- ▶ Even If their age was taken as 37 years then on the date of occurrence-in 1994- they would be just 15 years of age.
- ▶ The SC took note of the criminal history of the accused and held that they were involved in serious crimes right from 1988, and if they were actually bourn in 1979 they would have been just 9-10 years old in 1988 and could be recognised as such by mere appearance.