

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.07.2011

+ **CRL.A. 483/2011**

MOHD. AZIM

..... Appellant

Through: Sh. Vishal Sehijpal and Sh. Farooq Chaudhry,
Advocates.

versus

STATE

..... Respondent

Through: Sh. Lovkesh Sawhney, APP for the State.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% **CRL.A. 483/2011 & Crl. M. (Bail) 638/2011 in Crl. A. 483/2011**

1. The appellant impugns a judgment and order of the learned Addl. Sessions Judge dated 21.03.2011 in SC No. 161/2008. He, together with the co-accused, was arraigned for having committed the offences punishable under Sections 302/307/427/429/120-B

IPC, and Sections 3/181 of the Motor Vehicles Act. He also stood trial for committing the offences punishable under Sections 4 and 5(1) together with Section 12 of the Delhi Agricultural Cattle Preservation Act. The appellant was convicted for the offences punishable under Sections 307/302 IPC as well as 427 IPC. Besides, they were also convicted under the Delhi Agricultural Cattle Preservation Act.

2. This Court had admitted the appeal on 21.04.2011. On the same day, the Court had directed an enquiry as to the appellant's true age as on the date of incident, i.e. 14.05.2008. The appellant had contended that he was a juvenile within the meaning of the expression under the *Juvenile Justice (Care and Protection of Children) Act, 2000* (hereafter called "the Juvenile Justice Act"). He contended that his date of birth is 18.02.1995, and has relied upon a School Leaving Certificate dated 12.12.2010 of the UPPS Sahaspur, District Bijnaur. The Court had directed an inquiry in terms of Section 7A of the Juvenile Justice Act on the same date, i.e. 21.04.2011. The Court had nominated the ASJ to consider the relevant materials and furnish a report to the Court.

3. Learned ASJ, in compliance with this Court's directions, furnished his report. The material part of the report dated 11.07.2011 reads as follows:

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I find nothing on record to dispute these findings returned by the aforesaid medical board. The combined opinion of all the members of the Board is that the age of the convict, as on the date of his examination by the Board, is between 20 to 22 years. Therefore, the age of the convict on the date of the incident would be between 17 to 19 years. As per ratio of various judgments of the High Court, on the estimated age of the convict opined by the medical board is to be read to the benefit of the convict. Therefore, the lower limit of the age of the convict as opined by the medical board is to be considered. In doing so, it becomes manifest that the age of the convict, as on the date of the incident, was less than 18 years and hence he was a juvenile.

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4. Learned ASJ considered the report of the Medical Board under the chairmanship of Dr. Sunil Kakkar, HOD of Radiology Department of the Deen Dayal Upadhyay Hospital. He also took into consideration the deposition of CW-1, Dr. M.P. Chaurasia, the said chairperson of the Medical Board and CW-2, Dr. Sameer Dhari. Similarly, the

deposition of Dr. Pankaj Agarwal, CW-3 was also considered. The cumulative effect of the depositions of these witnesses was that the age of the convict was between 20-22 years on the date he was examined by them. The incident, as noted previously, occurred on 14.05.2008. The medical witnesses also supported the testimony on the basis of their observations made during the Ossification or the Bone-Age Test conducted for this purpose.

5. The appellant, in addition to the report of the learned ASJ also places reliance on the status report filed by the concerned police station, i.e. Police Station Kapashera dated 12.05.2011 (wrongly shown to be 12.05.2010). The material report reads as follows:

“XXXXXX XXXXXX XXXXXX

During the inquiry, the brother of Appellant Mohd. Kalim Ahamed s/o Mohd. Hanif informed that his brother (Appellant) Mohd. Azim got admission in first class at Govt. Primary School, Sahaspur, Bijnor, UP. IO verified the date of birth of Appellant Mohd. Azim from above said school and received the certified copies of 1. School admission register pages 2. School leaving Certificate 3. Date of birth certificate issued by Principal. As per the school record the date of birth of appellant is 18.02.1995. The certified copies of age proof are attached herewith.

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6. We have considered the report of the learned ASJ – dated 11.07.2011 as well as the status report and the documents annexed with it, i.e. certified copy of the School Leaving Certificate, which mentions the appellant’s date of birth to be 18.02.1995. The other preliminary evidence produced in support of the appellant’s submission of being a juvenile on the date of the incident include a copy of the School Admission Register and the Date of Birth Certificate issued by the Principal. These have been verified by the concerned police authorities.

7. Having regard to the above material, the Court is satisfied that the appellant was a juvenile within the meaning of the expression when the incident occurred on 14.05.2008. Section 7A of the Juvenile Justice Act prescribes the procedure to be followed and the consequences to be followed whenever such claims are to be made. It also indicates the consequences which flow once a person is declared a juvenile. That provision is as under:

“XXXXXX XXXXXX XXXXXX

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 may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:*

Provided that a claim of juvenility may be raised before any court and it shall be recognized 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.

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8. Section 7(2) enjoins that the final order and sentence, if any, made by the Court “shall be deemed to have no effect.” By virtue of Sections 15(1)(g) and 16, of the Juvenile Justice Act, the maximum period a juvenile can be sent to a Special Home cannot exceed three years. In the present case, the appellant’s counsel urges that instead of following the procedure indicated in Section 7A – to set-aside the impugned judgment and consequently remit the matter for consideration and retrial, if necessary, by the Juvenile Justice Board, ends of justice would be better served if the appellant is directed to be released forthwith since he has nearly completed the maximum period which he could have undergone under detention in Special Observation Home. The incident as noticed earlier, had occurred on 14.05.2008. The appellant surrendered on 27.08.2008 and stood trial thereafter. He has not been granted bail all this while. Having regard to these circumstances, and the overall conspectus of the facts, we are of the opinion that ends of justice would not be sub-served if the matter is remitted for fresh trial/proceedings by the Juvenile Justice Board. Since the maximum period prescribed by Section 15 is not mandatory and is discretionary, we are of the opinion that interests of justice would be best sub-served if the appellant – who has been in custody for more than two years and ten months, is released forthwith. He does not wish to press the appeal on the merits.

9. In view of the above observations, the appeal is allowed. The impugned judgment

and sentence so far as it pertains to the appellant is hereby set-aside. The appellant shall be released forthwith. The appeal is disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**G. P. MITTAL
(JUDGE)**

**JULY 20, 2011
'ajk'**