

GAHC010064052020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(CrI.)/273/2020

BIPUL DAS
S/O RAJEN DAS, R/O MADHAPUR, PS-GHOGRAPAR, DIST-NALBARI,
ASSAM, PIN-781335

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR D N BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

19.07.2023

Heard Mr. U. Dutta, learned counsel for the applicant. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure for recalling the Order dated 03.06.2019, passed by this Court in I.A.(Crl.) No. 733/2018, accepting the Report dated 22.05.2019 of the learned Sessions Judge, Kamrup (M), Guwahati, along with a prayer to refer the matter before the duly constituted Medical Board with competent to declare the age of the applicant.

3. It is stated that on the basis of an F.I.R., lodged before the Sonapur P.S., alleging *inter alia* that the victim, who was a minor girl at the relevant day of incident, was forcibly taken and confined in the house of friend of the present accused applicant, and after investigation, the Charge-Sheet was filed under Section 366 of the Indian Penal Code against the present accused applicant and on his appearance and after recording the evidence, the learned Sessions Judge convicted him under Section 366 of the Indian Penal Code and sentenced him to undergo R.I. for 7 (seven) years and to pay a fine of Rs. 5,000/- in default R.I. for another 5 (five) months vide its judgment and order dated 17.06.2010. On being aggrieved and dissatisfied with the judgment and order passed by the learned Sessions Judge, Kamrup (M), Guwahati, in Sessions Case No. 186(K) 2010, the present applicant preferred a criminal appeal, being Crl. A./118/2010, before this Court, which is pending for disposal.

4. It is the contention of the applicant that at the time of commission of offence, i.e. on 19.05.2008, the accused applicant was a minor and as per the School Certificate, his date of birth is 19.10.1990. However, during trial, the accused could not take the plea of juvenility and he was accordingly convicted

considering him as a major who is of 21 years of age at the date of judgment.

5. Accordingly, an application, being numbered as I.A.(Crl.) No. 733/2018, was preferred before this Court and the matter was referred to the learned Sessions Judge, Kamrup (M), Guwahati, for determination of juvenility of the accused applicant. However, the learned Sessions Judge, only making an inquiry on the School Certificate, rejected the case of the accused applicant and submitted the Report dated 22.05.2019 without following due procedure of law. This Court, however, pleased to accept the aforesaid Report and accordingly dismissed the I.A.(Crl.)/733/2018, vide order dated 03.06.2019. Thereafter, the applicant again preferred another application, being I.A.(Crl.)/236/2020, before this Court for reference of the matter of juvenility by obtaining a medical opinion from a duly constituted medical board who is competent to declare the age of the accused applicant. However, this Court was pleased to dismiss the said application vide order dated 11.03.2020.

6. It is further stated that the learned Sessions Judge, while determining the juvenility of the applicant, ought to have referred the matter to the duly constituted medical board competent to declare the age of the accused applicant when his school certificate was not found in order. However, in spite of doing so, the learned Sessions Judge submitted the Report dated 22.05.2019 before this Court, which was accordingly accepted by this Court and dismissed the matter of determining the juvenility. Hence, the present application has been preferred for recalling the order passed by this Court, dated 03.06.2019, in I.A.(Crl.)/733/2018, accepting the Report of the learned Sessions Judge, dated 22.05.2019, which was submitted without following due procedure of law in

determining the juvenility of the accused applicant.

7. As per Section 7 (A) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it provides the procedure to be followed by the Officer while determining the juvenility. Rule 12 of the said Act also provide the procedure to be followed for determining the age of juvenility or a child in conflict with law. In the present case, when the School Certificate/Birth Certificate was not found in order, it was the duty of the Court to follow the other procedure as prescribed in the Rule 12 of the Act and it was the duty of the Court to sought for medical opinion from a duly constituted medical board who is competent to declare the age of the juvenile. But, without exhausting those procedure for determining the age of juvenility, the learned Sessions Judge submitted the report with an observation that the School Certificate, which was submitted before the Court, was forged. Hence, the present petition has to be filed by the applicant for recalling the order dated 03.06.2019, passed in I.A.(Crl.)/733/2018, whereby, this Court accepted the report of the learned Sessions Judge and dismissed the plea of juvenility taken by the accused applicant.

8. It is submitted by the learned counsel for the applicant that the Court has the duty to follow the procedure prescribed under Rule 12 of the of the Juvenile Justice (Care and Protection of Children) Act, 2000, and that should be the basis for determining of age both for a child in conflict with law as well as for the victim.

9. In support of his submissions, the learned counsel for the applicant relied

on following case laws:-

- (i) **Ashwani Kumar Saxena Vs. State of Madhya Pradesh**, reported in **(2012) 9 SCC 750**.
- (ii) **Jarnail Singh Vs. State of Haryana**, reported in **(2013) 7 SCC 263**.
- (iii) **State of Orissa Vs. Ainul Haque**, reported in **(1993) 3 Crimes 865**.
- (iv) **Ravi Vs. State of Kerala**, reported in **(2013) CriLJ 2455**.

10. Citing the above referred judgment of Hon'ble Supreme Court in **Ashwani Kumar Saxena (supra)**, the learned counsel for the applicant has given emphasize on paragraph Nos. 32 & 33 of the said judgment, which reads as under:

“32. "Age determination inquiry" contemplated under Section 7-A of the act read with rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical

Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the abovementioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination."

11. Accordingly, it is submitted by the learned counsel for the applicant that even if for the argument sake it is admitted that the School Certificate was forged or fabricated one, it was the duty of the Juvenile Justice Board or the Court to go for medical examination for the age determination. Further it is submitted by the learned counsel for the applicant that this Court has the power and authority to recall the order under Section 482 of the Code of Criminal Procedure. In that context, the learned counsel for the applicant relied on a decision of a full bench of Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur Vs. State of Gujarat**, reported in **(2017) 9 SCC 641**, and also relied on a decision of this Court in **Murti Dhar Singh & Ors. Vs. Vijendra Singh Jafa**, reported in **(2002) 3 GauLT 453**.

12. The learned counsel for the applicant further submitted that the learned Sessions Judge, without following the procedure prescribed under Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the procedure prescribed under Rule 12 of the said Act, submitted the report only on the basis of the School Certificate considering the same to be a forged one

and hence, the order passed by this Court in I.A.(CrI.)/733/2018, vide order dated 03.06.2019, accepting the report of the learned Sessions Judge is liable to be recalled and set aside and the matter be further remand back to the learned Sessions Judge to obtain an opinion from the medical board constituted by competent authority and to determine the age of the present accused applicant who was a juvenile at the time of alleged incident.

13. In this context, the learned Additional Public Prosecutor, Mr. Lahkar, has submitted that the learned Sessions Judge rightly submitted the report rejecting the prayer for plea of juvenility and this Court also rightly accepted the report of learned Sessions Judge and rejected the plea of juvenility. It is further submitted by him that the accused applicant took the plea at the appellate stage stating that as per the School Certificate, he was a juvenile at the time of alleged incident and on the basis of the said document, this Court passed an order on 28.11.2018 directing the learned Sessions Judge, Kamrup (M), Guwahati, to make an enquiry regarding the age of the accused applicant and accordingly, the learned Sessions Judge made an enquiry and also examined the Headmaster of No. 1, Pub Barsiral LP School, who was present before the Court along with Admission Register. It revealed during examination that the Admission Register is not for the year 1995 and it has been manufactured by him. He also admitted that the date mentioned in the School Certificate was written as per the direction of the mother of the accused applicant and he is not aware about the actual age of the accused applicant. And, accordingly, it has been opined by the learned Sessions Judge that the Register was manufactured by the witness and it is clear that the documents, which is placed before the Court, is fabricated documents and therefore, the learned Sessions Judge

rejected the plea of juvenility. It is further submitted by the learned Additional Public Prosecutor that the Court could have made an enquiry if the plea of the juvenility was raised before the Court and Medical Board would have been constituted in absence of the Birth Certificate or School Certificate as per Rule 12 of the said Act. But, the accused applicant took the plea of juvenility on the basis of the School Certificate and hence, there is no necessity of exhausting other procedure as per Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000. It is further submitted by the learned Additional Public Prosecutor that this Court has rightly rejected the plea of juvenility and accepted the report submitted by the learned Sessions Judge which is submitted after making an enquiry.

14. After hearing the submissions made by the learned counsel for both sides, I have carefully perused the case record and the order passed by this Court, dated 03.06.2019, in I.A.(Crl.)/733/2018, as well as the order/report submitted by the learned Sessions Judge, dated 22.05.2019.

15. It is a fact that as per Section 7 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is the Court or the Board who are to determine the age of the juvenile or child in conflict with law and as per Rule 12 (3) of the said Act, evidence has to be sought by obtaining the matriculation or equivalent certificates, if available, and in the absence thereof, the birth certificate from the school first attended and in absence of the said school certificate, the birth certificate given by a corporation or a municipal authority or a panchayat can be taken into consideration. However, as per Rule 12 (3) (b) of the said Act, it provides that in absence of any document specified in Rule 3 (a)

(i) (ii) (iii), the medical opinion may be sought for from a duly constituted medical board who is competent to declare the age of the juvenile. But, here in the instant case, it is the case of the accused applicant that he was a juvenile at the relevant time of incident and in support of his plea, he produced the School Certificate showing his date of birth as on 19.10.1990 and thus, at the time of the incident, i.e. on 19.05.2018, he was below 18 years of age. So his plea of juvenility is based only on his school certificate and as per which, at the time of alleged incident, he was below 18 years of age. Accordingly, the learned Sessions Judge made an enquiry asking the School Headmaster to remain present before the Court along with School Admission Register and after enquiry, it is admitted by the School Headmaster that the School Certificate was prepared by him and the date is also inserted in the certificate as per the instruction of the mother of the accused and accordingly, it is rightly opined by the learned Sessions Judge that the School Certificate, which is the basis for his plea of juvenility, is a forged document and hence, the learned Sessions Judge did not find any necessity to sought for any medical opinion regarding the age of the accused applicant.

16. More so, it is seen that the date of incident was on 19.05.2008 and after the lapse of more than 10 (ten) years, the ossification test will also not reveal proper medical age of the accused applicant as by the lapse of more than 10 (ten) years, he has already become a man of around 27-28 years of age, as per his own version.

17. Accordingly, in view of discussions made above, I do not find that any illegality has been committed by the learned Sessions Judge by not referring the

matter before the medical board seeking opinion regarding the age of the applicant as he himself produced the school certificate, which is the basis of his plea of juvenility, and hence, I do not find any reason to recall the Order dated 03.06.2019, passed by this Court in I.A.(Crl.) No. 733/2018, accepting the Report dated 22.05.2019 of the learned Sessions Judge, Kamrup (M), Guwahati.

18. In the result, I do not find merit in this application and accordingly the same stands dismissed.

19. Registry to list the connected criminal appeal, being Crl. A./118/2010, for hearing in its usual course

JUDGE

Comparing Assistant