

GAHC010171652023



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

Case No. : I.A.(CrI.)/687/2023

RABIRAM DAS
S/O SRI SABIR DAS, R/O VILLAGE KHARUAJAN, P.S. BARMA, DISTRICT.
BAKSA, ASSAM.

VERSUS

THE STATE OF ASSAM,
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J KALITA

Advocate for the Respondent : PP, ASSAM

Linked Case : CRL.A(J)/31/2022

PRAFULLA DAS
BAKSA
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

Advocate for : MR. B BHAGAWATI
AMICUS CURIAE
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16.08.2023
(Michael Zothankhuma, J)

Heard Mr. J. Kalita, learned counsel for the applicant and Ms. S. Jahan, learned Additional Public Prosecutor.

2. This application has been filed under Section 391 Cr.P.C. for recording further evidence for determining the juvenility of the applicant. The applicant herein i.e. Rabiram Das, had been convicted vide judgment dated 16.11.2021 passed by the learned Sessions Judge, Baksa, Mushalpur in Sessions Case No. 233/2018 under Section 302/34 IPC. He was thereafter sentenced to rigorous imprisonment for life with a fine of Rs.1,000/-, in default rigorous imprisonment for two months for the offence 302/34 IPC.

3. The applicant's counsel submits that the issue of the juvenility of the applicant had been raised by the applicant prior to the case being committed to the learned Trial Court, vide application No. 480/2012. However, the application was dismissed by the learned Judicial Magistrate First Class, Nalbari vide order dated 21.04.2012.

4. The learned counsel for the applicant submits that the evidence of headmistress of Kharua Anusustia Jatiya Bidyalaya School shows that she had written the date of birth of the applicant as 16.11.1993, in the applicant's school certificate, without any birth of date being mentioned in the admission register of the school.

5. The learned counsel for the applicant thus submits that determination of the age of the applicant should be done in terms of Section 391 Cr.P.C. read with Section 94 of the Juvenile Justice(Care and Protection of Children)Act, 2015(herein referred to as 2015 Act).

6. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand, submits that the age of the applicant in the arrest memo made on 18.04.2011 shows that the applicant was 19 years of age. Further, the form wherein the applicant was examined under Section 313 Cr.P.C., shows that the applicant was 30 years on 23.09.2021. As such, the applicant would have been 19 years on the date of occurrence of the incident, i.e. on 17.04.2011. She thus submits that the application should be rejected.

7. We have heard the learned counsels for the parties. We have noticed that the applicant had raised the issue of juvenility before the learned Judicial Magistrate First Class, Nalbari vide application No. 480/2012 and vide order dated 17.04.2012, the Headmistress of Kharua Anususita Jatiya Bidyalaya was asked to produce the admission registrar and to appear before the learned Court on 21.04.2012. The Headmistress Ms. Nomali Boro was also examined on 21.04.2012 wherein she stated that she had written the applicant's date of birth as 16.11.1993, on being told of the same by the mother of the applicant. However, there was no date of birth of the applicant mentioned in the admission

register of the school. The learned court thereafter observed that there was nothing concrete to suggest that the applicant was a minor on the date of committing of the offence and that the school register created a doubt as to the authenticity of the entry made in relation to the applicant, as there was a difference in the handwriting, relating to the entry in his name vis-a-vis the entries of the other students. Further, while the entry in the other pages of the school admission register showed that the students were admitted at the age of 6 years and above, the entry of the applicant showed him to be 5 years. The learned Court thus held that there was a reasonable doubt created in the mind of the Court as to the plea of juvenility taken by the applicant. The application of the applicant was thereafter rejected vide order dated 21.04.2012 passed by the Judicial Magistrate First Class, Nalbari and the case was then committed to the learned trial court for taking cognizance and trial.

8. Subsequent to the above facts, the applicant has not taken any plea during trial that he was a juvenile. The applicant has also never made a challenge to the order dated 21.04.2012 passed in application No. 480/2012 till today. As such, the order has attained finality as on date. The applicant has also not annexed any document before us, to show that he was a juvenile at the time of the incident, i.e. on 17.04.2011. The certificate issued by the headmistress of the school was also never exhibited before the learned trial court. The plea of juvenility having been rejected on 21.04.2012 by the Judicial Magistrate First Class, Nalbari, the applicant should have taken up the issue before the learned trial court. However, the issue was never taken up by the applicant before the learned trial court and he has only brought up the issue after 11 years, vide the present application which was submitted on 04.08.2023.

9. In view of the above reasons, we are not inclined to allow the present application. The application is accordingly dismissed.

JUDGE

JUDGE

Comparing Assistant