

Court No. - 50

Neutral Citation No. - 2023:AHC:223149

AFR

Case :- CRIMINAL REVISION No. - 105 of 2021

Revisionist :- Akhilesh

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Dinesh Kumar Yadav,Atmaram Nadiwal

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Learned counsel for the revisionist and learned A.G.A. for the State-respondent are present.
2. None appeared on behalf of respondent No.2.
3. Notice has been served on respondent Nos. 1. Notice has also been served upon respondent No.2, through A.G.A. as well as C.J.M. concerned.
4. The instant Criminal Revision has been preferred by the revisionist/accused against the judgment and order dated 04.12.2020 passed by learned Session Judge, Maharajganj in Criminal Appeal No.32 of 2019 Smt. Kumari @ Phul Kumari Vs. State of U.P. and another, whereby the order dated 03.04.2015 of Juvenile Justice Board, Maharajganj, District Maharajganj has been set-aside and the application of the revisionist for declaration of his juvenility is rejected. The accused has been declared as major on the date of incident dated 01.02.2014. Ramakant, father of the revisionist is deponent in present revision.
5. Heard learned counsel for the revisionist as well as learned A.G.A. appearing for the State and perused the material available on record.
6. The factual matrix of the case in brief are that First Information Report dated 22.03.2014 was lodged at the instance of mother of the victim against named accused Akhilesh under Section 363, 366 of I.P.C. in Case Crime No.296 of 2014 and after investigation accused has been chargesheeted under Sections 363, 366ka, 376 of I.P.C. and Section 3/4 of POCSO Act, P.S. Maharajganj with the allegation that accused enticed away his minor daughter aged about 14 years studying in Class IXth, in the night of

01.02.2014 at around 10 PM; both victim and accused belonged to schedule caste. She searched for her daughter for many days, but could not trace her out. Her daughter also took away some ornaments and cash with her. Police submitted chargesheet against the accused under Section 363, 366Ka and 376 of I.P.C. and Section 3/4 of POCSO Act placing reliance on statement of victim under Section 164 Cr.P.C. as well as other evidences collected during the investigation.

7. The accused moved an application before the Juvenile Justice Board, Maharajganj, with averment that on the date of alleged incident dated 01.02.2014 he was declared juvenile. As his date of birth is mentioned as 24.09.1997 in his High School Marksheet, the said marksheet has been issued by Janta Uchchatar Madhyamik Vidyalaya, Harpur Pakadi, District Maharajganj. The Juvenile Justice Board placed reliance on date of birth mentioned in the High School Marksheet of the accused which was verified by evidence of the clerk of said school by his sworn testimony before the court. He also produced scholar register of the accused in which his name is mentioned at Serial No.5341, where he received education from class VIth to Xth and his date of birth is mentioned as 24.02.1997 therein. The said clerk also produced High School marksheet, transfer certificate, attendance and fee registers and filed photocopies of the same with his attestation. He was also cross-examined by the counsel for informant in juvenile inquiry proceedings, whereas the stand of the informant was that the accused received his elementary education in Primary School, Harpur Pakadi, Maharajganj, wherein his date of birth is mentioned as 17.02.1995, and to prove that document acting Headmaster Prathmik Vidyalaya, Harpur Pakadi, Sri Manish Kumar was examined as P.W.1. As two different documents were produced with regard to date of birth of the accused, a medical board was

constituted on orders of Juvenile Justice Board, wherein the age of accused was ascertained around 18 years in its report dated 25.03.2015.

8. Learned Juvenile Justice Board also observed that on the basis of date of birth mentioned in the High School marksheet of the accused his age comes to 16 years 4 months and 7 days on the date of incident, which has been certified by CW1 and CW2. The report of Chief Medical Officer dated 25.03.2015 also corroborates the age of the accused which is calculated on the basis of date of birth mentioned in High School marksheet. The Juvenile Justice Board also observed that the age determination report of medical board has been filed after one year of the incident, therefore, in all probability the accused was below 18 years of age on the date of incident and declared him juvenile in conflict of law under Section 2(L) Juvenile Justice (Care and Protection of Children) Act, 2000 by order dated 03.04.2015.

9. Feeling aggrieved by the age determination report and declaration of the accused as juvenile in conflict of law, the informant filed a Criminal Appeal before Session Judge, Maharajganj which was allowed by impugned order, and the application for declaration of juvenility moved by the revisionist was rejected and accused was declared major.

10. Learned counsel for the revisionist submitted that the approach of learned appellate court is contrary to settled law, as the date of birth mentioned in High School marksheet of the accused as well as the age determination report of medical board both fairly suggests that accused was below 18 years of age on the date of incident. However, learned appellate court placed reliance on age of the accused as stated by him before this Court in Civil Misc. Writ Petition No.9053 of 2014

(Smt. Radhika and others Vs. State of U.P.), in which he has stated his age as 24 years in affidavit on the basis of his Voter Identity Card as well as his date of birth mentioned in the record of Primary School Harpur Pakadi, Ghivhan as 07.02.1995.

11. He further contended that the impugned order passed by learned court below is not sustainable under law and deserves to be set-aside. He also contended that learned appellate court has failed to consider the provisions of Rule 12(3) of Juvenile Justice (Care and Protection of Children), Rules 2007 in which the guidelines for age determination of a juvenile in conflict of law are clearly mentioned. Learned appellate court also placed reliance on the judgment of this Court in **Meghraj Sharma vs State Of U.P. And Anr. in Criminal Revision No.3449 of 2019 decided on 14.07.2021**, wherein this Court in paragraph No.44 observed as under:-

"44. On the basis of interpretation of law by Apex Court and discussed above, the salient features that can be culled out for determination of age of a juvenile under the 2007 Rules are:

(i) If Matriculation Certificate is available, only the same is to be relied upon for determination of age.

(ii) Matriculation Certificate can be disbelieved only if it is forged or fabricated which has to be adjudicated after enquiry and sufficient evidence to be dealt with in accordance with procedure established to hold a document as forged and fabricated.

(iii) If Matriculation Certificate is not available or in its absence alone can resort be taken to determination on basis of date of birth certificate from school first attended (Rule 3 (a) (ii) of the Rules 2007.)

(iv) If date of birth certificate is not available or is disbelieved if found to be forged and fabricated after the adjudication and considering the evidence and following the procedure for holding the document as forged and fabricated.

(v) Resort can be taken to the birth certificate given by the corporation or a municipal authority.

(vi) If the said birth certificate given by the corporation or a municipal authority is not available or is held to be forged and fabricated and not worthy of reliance after conducting the enquiry on the basis of evidences adduced, resort can be taken to Clause 12 (3) (b) of the Rules 2007."

12. Per contra, learned A.G.A. submitted that there is no infirmity or illegality in the impugned order passed by the learned court below, whereby the accused-revisionist has been declared major and the order passed by Juvenile Justice Board, Maharajganj in regard to his juvenility has been set-aside.

13. He further submitted that the Investigating Officer had not initiated any action to get the accused declared as juvenile by moving appropriate proceedings. The victim was aged about 14 years at relevant time and student of Class IX. The date of birth of the revisionist is mentioned as 07.02.1995 in school records of Primary School, Harpur Pakadi Ghivhan and same has been proved by the informant before Juvenile Justice Board by producing headmaster of said school as court witness at the instance of the first informant who proved this case on the basis of school records and stated that the revisionist studied in his school, where his date of birth is recorded as 07.02.1995. The deponent Ramakant, father of the revisionist appeared as witness before the Juvenile Justice Board and stated that date of birth of his son as 24.09.1997, and in support of this statement he produced High School Marksheet and Transfer Certificate of the revisionist. Inasmuch as in affidavit filed before this court in some other proceedings it is stated by the revisionist in affidavit that he is aged about 22 years. Therefore, the impugned order need no warrant any interference on the basis of his own admission before this Court in

other proceedings arising out of said offence and date of birth recorded in school first attended by the revisionist.

14. In chargesheet filed against revisionist for offence under Sections 363,366 and 376 of I.P.C. and Section 3/4 of POCSO Act by the Investigating Officer, his age is mentioned as around 18 years. This chargesheet has been filed on 06.06.2014, whereas the date of offence is mentioned 01.02.2014 in FIR, therefore the chargesheet has been filed after four months of the incident.

15. Learned appellate court has set-aside the order passed by learned Juvenile Justice Board dated 03.04.2015, whereby the revisionist has been declared juvenile on the ground that his date of birth is mentioned as 17.02.1995 in records of school first attended by him and the same has been proved by evidence of the headmaster of the said school, which is a Government Primary School.

16. The accused has also stated his age about 24 years in a Writ Petition filed in the year 2014. Therefore, the date of birth mentioned in High School marksheet of the 2012 becomes perfectly doubtful, and learned appellate court has declared the accused as major on the date of offence i.e. 01.02.2014, and sent back the record to the Juvenile Justice Board for necessary action.

17. Learned appellate court has placed reliance upon a judgment of the Apex Court in **Parag Bhati (Juvenile) Through Legal Guardian-Mother Smt. Rajni Bhati Vs. State of U.P. and another (2016) 12 SCC 744**, the Hon'ble Apex Court decided an appeal directed against the final judgment and order passed by the learned Single Judge of this Court, whereby the revision filed by the appellant claimed to be juvenile against the judgments of Juvenile Justice Board and Additional Sessions Judge, Meerut rejecting his claim of juvenility.

The accused was charged for the offence under Sections 302, 394, 504 and 506 of IPC, he was arrested and produced before the Juvenile Court and was remanded and kept in juvenile home. The Juvenile Justice Board after considering the evidence on record came to the conclusion that the date of birth as recorded in various schools certificate submitted by the father of the accused-appellant on his behalf, is doubtful and the juvenile was referred to the Medical Board for determination of his age. The Chief Medical Officer, Meerut on 23.08.2011 opined that the age of the appellant-accused is about 19 years.

18. The chargesheet in above case was filed before The Juvenile Justice Board, Meerut. The Board placing reliance on the opinion of the Medical Board, vide order dated 07.09.2011 held that appellant-accused is major and accordingly transferred the case before the Chief Judicial Magistrate, Gautam Buddha Nagar. Aggrieved by the order dated 07.09.2011 the appellant-accused preferred an appeal before the court of District and Sessions Judge, Meerut. Learned Additional Session Judge, Meerut dismissed that appeal filed by the appellant-accused vide order dated 04.10.2011. Being aggrieved by the orders dated 07.09.2011 and 04.10.2011 passed by the court below the appellant-accused preferred revision before the High Court, however, the same was dismissed vide order dated 24.05.2013, which was under challenged before the Apex Court.

19. The point for determination before the Apex Court was whether on the facts and circumstances of the present case when the date of birth mentioned in the Matriculation Certificate is doubtful, the ossification test can be the last resort of proof of juvenility of the accused. The Hon'ble Apex Court in the case of Parag Bhati Vs. State

of U.P. and another (Supra) discussed the statutory provisions of Juvenile Justice (Care and Protection of Children) Act, (2000) and Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, (2007) and some case laws such as **Ashwani Kumar Saxena Vs. State of M.P.** (2012) 9 SCC 750, **Hari Ram Vs. State of Rajasthan and another** (2009) 13 SCC 211, **Om Prakash Vs. State of Rajasthan and another** (2012) 5 SC 201 and **Abuzar Hossain alias Gulab Hossain Vs. State of West Bengal** (2012) 10 SCC 489 and held as under:-

“24. While considering a similar question, this Court in Ashwani Kumar (supra) held 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 above mentioned 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.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

25) In Abuzar Hossain (supra), wherein a three-Judge Bench of this Court has already summarized the position regarding what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The credibility and/or acceptability of the documents would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected and if such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the appellant.

26) It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special

protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

27) The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.

28) It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain (supra), an enquiry for determination of the age of the accused is permissible which has been done in the present case.

29) In view of the foregoing discussion, we do not find any illegality in the orders passed by the Board and the Court of Sessions and also of the High Court which requires our interference.”

20. The Hon'ble Apex Court in **Rajendra Chand Vs. State of Chattisgarh and others (2002) 2 SCC 287** held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on

behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases.

21. As the matter relates to the year 2014, Juvenile Justice (Care and Protection of Children) Act, 2000 will be applicable in the case. Model Central Rules i.e. Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3) of Rules 2007 reads as under:-

“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.”

22. In present case there is variation in date of births of the accused/appellant mentioned in school records of Janta Uchchatar Madhyamik Vidyalaya, Harpur Pakdi, District Maharajganj, from where he passed his High School examination in the year 2012 as well as Basic Primary School, Harpur Pakadi Ghivhan where he received primary education. In former his date of birth is mentioned as 24.09.1997, on which reliance has been placed on Juvenile Justice Board, wherein latter is date of birth is mentioned as 07.02.1995, whereon reliance has been placed on by appellate court. However, the parties have not specifically taken stand that the date of birth mentioned in school record relied by other side is fake or forged. The simple issue in this case is that two date of births are mentioned in regard to the revisionist who has claimed to be juvenile on the date of alleged offence. In his two school records, the school from which he passed High School examination as well as the school which is said to be first attended by him. The date of birth mentioned in both the schools although different, yet is proved by evidence of officials of respective schools by producing the relevant records in this regard.

23. In this context the provisions of Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 become relevant, which provides that if Matriculation Certificate is available, only the same is to be relied upon for determination of age concerning the child juvenile.

24. This Court in **Meghraj Sharma vs State Of U.P. And Anr. (supra)** held that Matriculation Certificate can be disbelieved only if it is forged or fabricated which has to be adjudicated after enquiry and sufficient evidence to be dealt with in accordance with procedure established to hold a document as forged and fabricated. If

Matriculation Certificate is not available or in its absence alone can resort be taken to determine the age on basis of date of birth certificate from school first attended and in absence of the documents mentioned in Clause (a) of Rule 3 of the Rules 2007, only the medical opinion will be sought from a duly constituted medical board, which would declare the age of juvenile a child.

25. In the case in hand, according to date of birth mentioned in High School examination record of the revisionist his age was calculated by Juvenile Justice Board as 16 years 4 months and 7 days on the date of alleged offence i.e. 24.09.1997. Whereas on the basis of date of birth mentioned in primary school records of the revisionist, which is 17.02.1995, the appellate court has held that he was more than 18 years of age, and on the basis of said documents as well as his own admission made before the High Court in writ petition has held him major on the date of offence.

26. The learned appellate court has lost sight of the fact that admission of a person claiming himself to be juvenile before any judicial proceedings or collateral proceedings arising out of same offence is not illustrated, as a ground for determination of age of a person claiming himself to be a juvenile neither under the Act of 2000 nor Model Central Rules framed in the year 2007. In absence of any finding of court's below that the date of birth mentioned in High School record of the revisionist are forged, his date of birth recorded in school first attended cannot be resorted to for determination of the age of the revisionist. Inasmuch as, the medical determination of age of the revisionist, learned Chief Medical Officer has opined in his report dated 25.03.2015 that he was around 18 years of age on the

basis of physical appearance as well as the ossification test conducted by radiologist.

27. Thus, according to medical age determination report, which has been filed after one year of the incident, the revisionist should be held to be juvenile and below the age of 18 years. In Rule 12(3) of Rules 2007, it is provided that in absence of the documents mentioned in Clause (a) of Medical Board will declare the age of juvenile a child. In case of exact assessment of the age it 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. Thus, according to this sub-rule, the age of the revisionist can be held as around 17 years, on the date of alleged incident which is in consonance with his date of birth recorded in his High School Examination Marksheet.

28. There is consistency and conformity between the age determination report of the revisionist issued by the Chief Medical Officer and his date of birth is mentioned in his High School records and both of these strongly suggests towards juvenility of the revisionist on the date of alleged incident. According to the above rules, the date of birth of the revisionist mentioned in his High School records will have priority over his date of birth mentioned in records of school of first attended.

29. On the basis of foregoing discussions, this Court is of the considered opinion that the approach of Juvenile Justice Board while declaring the revisionist as juvenile on the basis of his medical age determination report as well as his date of birth mentioned in High School records of the school concerned is in conformity with the law

laid down under statutory Rules of 2007, as well as various judicial pronouncements cited and discussed as above.

30. Learned appellate court has committed legal error while setting-aside the finding and order of Juvenile Justice Board dated 03.04.2015, declaring the revisionist as major on the basis of his date of birth mentioned in the records of school first attended as well as his admission in affidavit filed before this Court in support of Civil Misc. Writ Petition No.9053 of 2014 (Smt. Radhika and others Vs. State of U.P.).

31. Consequently, the impugned judgment and order passed by learned Session Judge is set-aside and the order dated 01.02.2014 passed by Juvenile Justice Board declaring the revisionist as juvenile is affirmed. Revision stands **allowed**, accordingly.

32. Let the copy of this judgment be certified to Juvenile Justice Board concerned to proceed with the matter accordingly.

Order Date :- 27.10.2023

Ashish/-