

The High Court Of Judicature At Allahabad
Sitting At Lucknow

Neutral Citation No. - 2024:AHC-LKO:23574

Judgment Reserved on – 12.03.2024

Judgment Delivered on – 18.03.2024

A.F.R.

Court No. - 27

Case :- CRIMINAL REVISION No. - 10 of 2021

Revisionist :- Sandeep Kumar

Opposite Party :- The State And Anr.

Counsel for Revisionist :- Ajay Kumar

Counsel for Opposite Party :- G.A., Abhishek Dwivedi, Anjani

Kumar Misra, Jagat Pal Singh, Nadeem Murtaza, Puneet

Saxena, Santosh Kumar Tirpathi, Surekha Patel

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Ajay Kumar, the learned counsel for the revisionist, Sri Anurag Verma, the learned AGA-I for the State and Sri Santosh Kumar Tripathi, the learned counsel for the opposite party no. 2.
2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionist has challenged validity of an order dated 01.12.2020 passed by the Additional Session Judge/Special Judge POCSO Act, Lucknow in Criminal Appeal No. 251 of 2020 whereby the appeal was allowed, the order dated 09.10.2020 passed by the Juvenile Justice Board in Misc. Case No. 11/2020 arising out of Case Crime No. 2013 of 2015, under Section 302/120B IPC, Police Station Chinhaat, Lucknow, was set aside and the matter was remitted to the Juvenile Justice Board to decide the age of the delinquent on the basis of his date of birth mentioned in his educational certificate, unless the same is not believable for any cogent reason, in accordance with the provision contained in Section 94 of the Juvenile Justice Act, 2015. The revisionist has also challenged validity of the order dated 22.12.2020 passed by the Juvenile Justice Board in the aforesaid case

deciding the claim of juvenility of the accused in furtherance of the remand order dated 01.12.2020 and holding him to be a juvenile.

3. Briefly stated, facts of the case are that the revisionist had filed FIR No. 192/2015 in Police Station Chinhat, Lucknow under Sections 302, 120-B IPC against the respondent no. 2 and his father Awadh Ram, alleging that the opposite party no. 2 is uncle of the revisionist, the revisionist's father had sold away some land for a very meager consideration, due to which the revisionist was annoyed and he came to the complainant's house at about 01:30 p.m. on 18.05.2015 and asked the revisionist's father that the temple's priest was calling him and he took the revisionist's father with him. The revisionist and his brother were also following them and they saw that the opposite party no. 2 assaulted the revisionist's father with a *Banka* (a sharp edged tool) on his neck. The revisionist alleged that the opposite party no. 2 had killed his father under a conspiracy with the father of the accused.
4. The opposite party no. 2 claimed that he was a juvenile whereas the revisionist opposed this claim. The juvenile justice board decided this issue by means of an order dated 09.10.2020 wherein it is recorded that the headmistress of Primary School Saraisheikh, Chinhat had produced the original admission form, transfer certificate and admission register before the Juvenile Justice Board and had stated that as per the aforesaid documents, the date of birth of the opposite party no. 2 is 07.07.2002. However, the headmistress of the aforesaid school appeared again and stated that the date of birth of the revisionist as entered in the school records is 12.07.1997 and she stated that earlier she had erroneously produced the documents of another student Shahiba Khatoon.
5. The revisionist filed an application for summoning the parivar register of the respondent no. 2. He submitted copies of voter list of Gram Panchayat Saraiksheikh as per which the age of the opposite party no. 2 was 23 years. The revisionist also produced a list of Pradhan Mantri Jan Aryogya beneficiaries which mentioned the age of the opposite party no. 2 to be 26 years.

6. The board allowed the application for summoning of pariwar register and the Gram Panchayat Vikas Adhikari, Gram Panchayat Saraishikh Block Chinhath Lucknow appeared before the Board and produced pariwar register, in which the date of birth/ age of the revisionist was mentioned as 17 years. However, the said witness stated that he does not know as to when this entry was made in the register.
7. The Juvenile Justice Board took into consideration the discrepancy in the date of birth of the opposite party no. 2 mentioned in various records and found that his date of birth mentioned in the educational documents i.e. 12.09.1997, is not believable and the opposite party no. 2 should be examined by a medical board to ascertain his age.
8. The Medical Board examined the opposite party no. 2 on 16.10.2020 and opined his age to be about 25 years, from which it appears that on the date of the incident, the accused a major.
9. The accused challenged the aforesaid order dated 09.10.2020 passed by the Juvenile Justice Board by filing Criminal Appeal No. 251/2020, which was decided by the learned Additional Sessions Judge/ Special Judge POCSO Act, Lucknow by means of the impugned judgment and order dated 01.12.2020.
10. The appellate court held that the headmistress of the primary school had earlier stated the date of birth of the opposite party no. 2 to be 07.07.2002 but later she clarified that the aforesaid date was mentioned erroneously on the basis of the documents of another student Sahiba Khatoon. She corrected the mistake and said that as per the school records, date of birth of the applicant is 12.07.1997 and the opposite party no. 2 had taken admission to the school on 07.07.2002. The appellate court found the testimony of the headmistress and the documents produced by her to be believable.
11. The appellate court further held that Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that for determination of age of juvenile, the date of birth mentioned in the educational documents will be given priority above other evidences and the Juvenile Justice Board does not have an option to ignore this evidence and to proceed to ascertain the date of birth of the accused

on the basis of material which finds place at lower priority in Section 94 of the Act. Accordingly, the appellate court set aside the order dated 09.10.2020 passed by the Juvenile Justice Board and remanded the matter to the Board, for deciding it afresh keeping in view the date of birth of the accused mentioned in his educational documents, unless the same are not believable for any valid reason.

12. In compliance of the aforesaid order dated 01.12.2020, the Juvenile Justice Board passed the impugned order dated 22.12.2020 holding the date of birth of the accused to be 12.07.1997 as mentioned in his educational documents.
13. The learned AGA has placed reliance on a decision of the Hon'ble Supreme Court in the case of **Manoj v. State of Haryana**: 2022 6 SCC 187.
14. The incident, from which the present case arises, took place on 18.05.2015. The Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 15.01.2016 *Vide* S.O. 110(E), dated 12.01.2016. On the date of the incident, Juvenile Justice (Care and Protection of Children) Act, 2000 was in force and the following provision of the Act are relevant for the present matter: -

(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;

(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

* * *

7-A. 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 enquiry, 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 recognised 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.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

15. From a reading of Section 7A, it becomes obvious is that whenever a claim of juvenility is raised, an inquiry has to be made and such inquiry would take place by receiving evidence which would be necessary, so as to determine the age of such person.
16. The procedure to be followed for the determination of age is provided under Rule 12(3)(b) of the 2007 Rules, which reads as:

“12. Procedure to be followed in determination of age.—(3) 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.”

17. Sub-clause (3) of the aforesaid Rule clearly mandates that while conducting an inquiry about the juvenility of an accused, the Juvenile

Justice Board would seek evidence by obtaining the matriculation or equivalent certificates and in the absence whereof the date of birth certificate from the school first attended and in absence whereof the birth certificate given by a corporation or a Municipal authority or a Panchayat. It is made clear by sub-clause (b) that only in the absence of the aforesaid three documents, medical information would be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. Thus, it is only in the absence of the aforesaid documents that the Juvenile Justice Board can ask for medical information/ossification test.

18. In **Ashwani Kumar Saxena v. State of M.P.**, (2012) 9 SCC 750, the Hon'ble Supreme Court held that:—

“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.

* * *

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.

* * *

41. This Court in Babloo Pasi v. State of Jharkhand (2008) 13 SCC 133 held, in a case where the accused had failed to produce evidence/certificate in support of his claim, medical evidence can be called for. The Court held that:

“22. ... The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”

This Court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to redetermine the age of the accused.”

(Emphasis supplied)

19. It is also relevant to note of the provisions contained in Sections 35 and 114 of the Evidence Act, which provide as follows:—

“35. Relevancy of entry in public record or an electronic record], made in performance of duty.—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

* * *

114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

* * *

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to illustration (e)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (f)—the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

* * *

20. Thus the entry made in the School Records of Government Primary School in which the accused has studied, will not only be relevant as per the provision contained in Section 35 of the Evidence Act, it will be presumed to be correct under Section 114 of the Evidence Act. As

the date of birth has been certified by the Head Mistress of the primary school in which the accused had studied, which is mentioned in Rule 12 (3) (a) (ii), the Court or the Juvenile Justice Board could not have proceeded to consider the birth certificate given the panchayat or the medical opinion.

21. In **Abuzar Hossain v. State of W.B.**, (2012) 10 SCC 489, the Hon'ble Supreme Court summarized the legal position in this regard in the following words:—

*“39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. **The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.***

(Emphasis supplied)

22. Although **Rishipal Singh Solanki v. State of U.P.**, (2022) 8 SCC 602 is a case involving the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, the following general principles of law summarized in that case would serve as guiding principles which would apply to the present case also:—

*“33.3. When a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, **the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.***

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

* * *

33.6. It is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

(Emphasis supplied)

23. In **Manoj v. State of Haryana**: (2022) 6 SCC 187 relied upon by the learned A.G.A., it was held that: -

“41. ...the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. As also held in Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133, the provisions of the statute are to be interpreted liberally but the benefit cannot be granted to the appellant who has approached the Court with untruthful statement.”

24. When we examine the facts of the present case in light of the law laid down in the above mentioned cases, it appears that the Primary School Saraisheikh, Chinhath had produced the original admission form, transfer certificate and admission register before the Juvenile Justice Board and had stated that as per the aforesaid documents, the date of

birth of the opposite party no. 2 is 07.07.2002. However, the headmistress of the aforesaid school appeared again and stated that the date of birth of the revisionist as entered in the school records is 12.07.1997 and she stated that earlier she had erroneously produced the documents of another student Shahiba Khatoon.

25. The parivar register mentions the age of the accused as 17 years, without mentioning the date or year in which this entry was made and, therefore, this entry does not prove the age of the accused on the date of the incident.
26. The discrepancy in date of birth mentioned in school records as mentioned in Rule 12 (3) (a) (ii) of the 2007 Rules with the age of the accused as per the Voter List or the List of Pradhan Mantri Jan Aryogya beneficiaries will not invalidate the date of birth, as the later documents do not find place in Rule 12 (3) of the 2007 Rules. The opinion of Medical Board regarding age of the accused could only have been called for in case any documents mentioned in Rule 12 (3) (a) was not available, which is not the case here.
27. The appellate court had held that the headmistress of the primary school had earlier stated the date of birth of the opposite party no. 2 to be 07.07.2002 but later she clarified that the aforesaid date was mentioned erroneously on the basis of the documents of another student Sahiba Khatoon. She corrected the mistake and said that as per the school records, date of birth of the applicant is 12.07.1997 and the opposite party no. 2 had taken admission to the school on 07.07.2002. The appellate court found the testimony of the headmistress and the documents produced by her to be believable. The appellate court had set aside the order dated 09.10.2020 passed by the Juvenile Justice Board and remanded the matter to the Board, for deciding it afresh keeping in view the date of birth of the accused mentioned in his educational documents, unless the same are not believable for any valid reason. This order was not challenged by the revisionist.
28. In compliance of the aforesaid remand order dated 01.12.2020 passed by the appellate Court, the Juvenile Justice Board passed the impugned order dated 22.12.2020 holding the date of birth of the

accused to be 12.07.1997 as mentioned in his educational documents, which finding is in accordance with the provisions contained in Rule 12 (3) (a) of the Rules of 2007.

29. Therefore, there is no illegality in the impugned order dated 22.12.2020 passed by the Juvenile Justice Board warranting interference by this Court in exercise of its Revisional Jurisdiction.
30. The revision lacks merits and the same is hereby dismissed.

(Subhash Vidyarthi, J.)

Order Date: 18.03.2024
Pradeep/-