

The High Court of Judicature at Allahabad

Sitting at Lucknow

**Neutral Citation No. - 2024:AHC-LKO:20464
A.F.R.**

Court No. - 27

Case :- CRIMINAL REVISION No. - 1059 of 2023

Revisionist :- Juvenile ‘ X’ Thru. His Father Babban Kori

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko And 3
Others

Counsel for Revisionist :- Abhinav Srivastava,Rahul Srivastava

Counsel for Opposite Party :- G.A.

Hon’ble Subhash Vidyarthi J.

1. Heard Sri Abhinav Srivastava, the learned counsel for the revisionist, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and perused the records.
2. By means of the instant revision filed under Section 102 of Juvenile Justice Act, 2015 the revisionist has made following prayers:

“Wherefore it is prayed that the present Criminal Revision may kindly be allowed and the impugned order dated 07.07.2023 a Criminal Appeal 29/2023 Ram Pratap (Changed Name) vs. State of U.P. by the Learned Court of Additional District Judge/Special Judge (POCSO) Ayodhya, in so far as it relates to the present revisionist may kindly be set-aside.

It is further prayed that during the pendency of this Criminal Revision before this Hon’ble Court, the proceedings of the case in the court below may kindly be stayed.

It is further prayed that any other relief which this Hon’ble Court deems fit and proper in the circumstances of the case may also kindly be granted to the revisionists.”

3. The impugned order dated 07.07.2023 is an order passed by the Presiding Officer, Children’s Court, Faizabad/Ayodhya dismissing the appeal filed by the juvenile-delinquent against an order dated 19.04.2023, passed by Juvenile Justice Board holding that the juvenile-delinquent needs to be tried as an adult and referring the matter to the Children’s Court.

4. The aforesaid order dated 19.04.2022 was passed by the Juvenile Justice Board in furtherance of an order dated 18.04.2022 whereby the revisionist was declared to be a juvenile in conflict with law and it was held that on the date of the incident he was about 16 years, 6 months of age.
5. The order dated 18.04.2022, passed by the Juvenile Justice Board was not challenged by the revisionist and it has attained finality. The order dated 19.04.2022, by which the matter was referred to the Children's Court, has also not been challenged in this revision.
6. The revisionist has merely challenged the appellate order dated 07.07.2023 on the grounds that the decision is bad in law, the impugned order has been passed without application of mind to the facts and circumstances of the case and material available on record and it is illegal, arbitrary and without any application of judicial mind. It has further been contended that as per the High School marks-sheet of the revisionist, he was about 13 years, 11 months and 10 days at the time of the incident and that the Sessions Court has not considered the provisions contained in Section 94 (2) (i) Juvenile Justice (Care and Protection of Children) Act, 2015.
7. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides as follows: -

“94. Presumption and determination of age.— (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age. (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—
the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

the birth certificate given by a corporation or a municipal authority or a panchayat;

and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

8. A bare reading of Section 94 (2) (i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 indicates that the date of birth certificate from the school or the matriculation or the equivalent certificate from the concerned examination board, have been given equivalent weight.
9. In the order dated 18.04.2022, the Juvenile Justice Board has mentioned that as per the marks-sheet of the revisionist of the High School examinations held in the year 2018, his date of birth was 12.05.2004 and he has passed the High School examination at the age of less than 13½ years. The date of the incident is 22.04.2018. The prosecution has produced a certificate dated 10.08.2018 issued by Modern School, Poora-1, Faizabad, wherein the date of birth of the juvenile-delinquent is mentioned to be 10.03.2001. Therefore, it was a document mentioned in Section 94 (2) (i) Juvenile Justice (Care and Protection of Children) Act.
10. The learned counsel for the revisionist has relied upon a decision of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki Vs. State of U.P.:** (2022) 8 SCC 602, wherein the Hon'ble Supreme Court referred to numerous precedents on this point and summarized the law in this regard as follows: -

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for

rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

*33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence **the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending** (vide Section 9 of the JJ Act, 2015).*

*33.3. That 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.

*33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but **when there is a***

determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That 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.”

11. In **Sanjeev Kumar Gupta v. State of U.P.**, (2019) 12 SCC 370, the High Court had held that the accused was a juvenile on the basis of the date of birth entered in his matriculation certificate. In appeal, the Hon'ble Supreme Court scrutinized the evidence and found that the date of birth in the matriculation certificate was recorded on the basis

of the date of birth recorded in the previous school where the accused was a student from Class V to Class X and it was recorded without any underlying document. On the other hand, there was a clear and unimpeachable evidence in the form of the date of birth recorded in the records of Saket Vidya Sthali School. The Hon'ble Supreme Court reversed the order of this High Court based on the findings recorded on the basis of the matriculation certificate. Thus the legal position is that the date of birth entered in the High School certificate has not to be believed blindly, if the date of birth entered in the records of the school that was first attended by the accused is to the contrary. In such circumstances, the school record has to be considered for ascertaining the date of birth of the accused.

12. In **State (UT of J&K) v. Shubam Sangra**, 2022 SCC OnLine SC 1592, the Hon'ble Supreme Court held that: -

*73. Thus, 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 on the date of the incident and the documentary evidence at least prima facie establishes the same, he would be entitled to the special protection under the Juvenile Justice Act. However, when an accused commits a heinous and grave crime like the one on hand and thereafter attempts to take the 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 a common man in the institution entrusted with the administration of justice. As observed by this Court in Parag Bhati [Parag Bhati v. State of U.P., (2016) 12 SCC 744], the benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus be extended to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence inspiring confidence 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 is alleged to have 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.***

13. In **Manoj v. State of Haryana**, (2022) 6 SCC 187, the Hon'ble Supreme Court 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 [Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266] , 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.”

14. In Manoj (supra) the Hon'ble Supreme Court has referred to an earlier decision in the case of **Jyoti Prakash Rai Vs. State of Bihar: AIR 2008 SC 1696**, wherein it was held that though the Act is a beneficial legislation but principles of beneficial legislation are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not.
15. When this court examines the facts of the case in the light of the law explained by the Hon'ble Supreme Court in the above mentioned cases, it appears that the opposite party no.2 had lodged the F.I.R. on 22.07.2022 stating that her daughter aged about three and half years had gone missing from her home at about 3.30 p.m. on 22.04.2018. After investigation a charge sheet was submitted on 29.04.2018, stating that the dead body of the missing girl child was recovered on 25.04.2018 and thereafter Section 302 I.P.C. was added. The dead body was hidden in a sack tied with a rope. Pests had developed in the dead body. The charge sheet was submitted against the juvenile-delinquent for commission of offences under Sections 363, 302, 201, 376, 511 I.P.C. and Section 7/8 of POCSO Act and three other co-accused persons namely, father, mother and brother of the juvenile-revisionist were charged for commission of offence under Sections 302 and 201 I.P.C.
16. The learned counsel for the revisionist has contended that the certificate issued by the Modern School was not produced in original but a mere photocopy thereof was filed.

17. The contention raised by the learned counsel for the revisionist cannot be examined by this court at this stage as the order dated 18.04.2022 states that the certificate was issued before the Juvenile Justice Board and not its copy and this order has not been assailed by the revisionist and it has attained finality. There is no material before this Court to establish that the original certificate regarding date of birth was not produced before Juvenile Justice Board. When the Juvenile Justice Board in the order dated 18.04.2022 stated that the certificate dated 10.08.2018 issued by Modern School, Poora-1, Faizabad, wherein the date of birth of the juvenile-delinquent is mentioned to be 10.03.2001, was presented before the Board, in absence of any material to controvert this statement this court cannot presume that the aforesaid narration is incorrect.
18. In furtherance of the aforesaid order dated 18.04.2022 the Juvenile Justice Board passed an order dated 19.04.2022 for transferring the matter to be tried by the Children's Court Section 18 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. In the impugned order dated 07.07.2023, passed by the Children's Court it has been held that by means of an order dated 18.04.2022 the Juvenile Justice Board has ascertained the age of the juvenile to be 16 years, 6 months and no appeal was filed against the aforesaid order and it has attained finality. Therefore, the Children's Court had no other option except to treat the age of the juvenile to be 16 years, 6 months as ascertained by the order dated 18.04.2022 passed by the Juvenile Justice Board, which has attained finality. The Juvenile Justice Board has passed the order dated 19.04.2022 after taking into consideration the report of the Psychiatrist and assessing the physical and mental capabilities of the juvenile as also his capacity to understand the consequence of the offence allegedly committed by him. The juvenile is an accused of kidnapping a girl child aged about three and half years and killing her by strangulating her. An attempt to rape was made against the victim and sexual assault was made on her. Her dead body was hidden in a sack and three days after the incident it was thrown away from the rooftop. Pests had developed in the dead body.

These facts indicate the physical and mental capacity of the juvenile. The appellate court found that all the facts and circumstances of the case had been duly considered by the Juvenile Justice Board and therefore there was no need for any interference in that order.

19. In view of the aforesaid discussions, the grounds taken in the memo of revision that the impugned order has been passed in an illegal and arbitrary manner and without any application of judicial mind, is absolutely misconceived. It appears that the learned counsel for the revisionist has used such heavy words without taking care to understand its implication and without even going through the appellate order. The lack of challenge to the original order dated 19.04.2022 against which the appeal was filed wherein the impugned order dated 07.07.2023 was passed clearly indicates lack of proper professional care and concern while drafting the revision.
20. While deciding the plea of juvenility the courts have to take a just view after taking into consideration all the relevant facts and circumstances of the case and the material available on record, to ensure justice not only to juvenile-delinquent but to the victim of the offence, who in the present case was a girl aged about three and half years and upon whom an attempt to rape was committed who was subjected to sexual assault and who was killed ultimately. The offence committed falls in the category of the most heinous offences that can be committed by any human being.
21. Therefore, keeping in view the peculiar facts and circumstances of the case no lenient view can be taken favouring the accused - revisionist.
22. The revision lacks merit and the same is accordingly **dismissed**.

(Subhash Vidyarthi, J.)

Order Date : 06.03.2024

Ram.