



2025:AHC:160756

Reserved On:-26.08.2025

Delivered On:-11.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 4736 of 2019

Arun Kumar

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Rajendra Singh, Sarvagya Singh, Shiv Bahadur Singh

Counsel for Opposite Party(s) : G.A., Ishan Deo Giri, Praveen Kumar Singh, Saroj Kumar Tripathi, Syed Imran Ibrahim

Court No. - 47

HON'BLE SIDDHARTH, J.

1. Heard Dr. S. B. Singh, learned counsel for the revisionist; learned AGA for the State-respondents; Sri Praveen Kumar Singh, learned counsel for respondent no.2 and perused the material on record.

2. This criminal revision has been filed against the impugned judgment and order dated 04.11.2019 passed by Special Judge(POCSO) Act/Additional District and Sessions Judge, Varanasi, in Criminal Appeal No. 131 of 2019, (Arun Kumar Vs. State of U.P. and others) as well as order dated 11.07.2019 passed in Application No. Nill of 2019, (State Vs. Sujeet Patel and others) arising out of case crime no. 01/2019.

3. The Juvenile Justice Board, Varanasi, vide order dated 11.07.2019 held the accused to be minor aged about 17 years and 6 months.

4. The Juvenile Justice Board got the ossification test of the accused conducted by the order dated 27.05.2019 and in the report dated 24.06.2019 of the Medical Board, he was found to be 19 - 20 years of age. Since the incident took place on 01.01.2019, therefore, the Board found that at the time of incident, the accused was aged between 18 years and 6 months and 19 years and 6 months. After giving margin of one year on lower side, the accused was held to be juvenile aged about 17 years and 6 months.

5. The Juvenile Justice Board relied upon Modi's Medical Jurisprudence and a judgments of the Apex Court in the cases of **Ashwani Kumar Saxena Vs. State of M.P., (2012) 9 SCC 750; Jodh Veer Singh Vs. State of Punjab, 2013 (1) Alld. JIC 142 (SC) and the Deepak Kumar Singh Vs. State of**

Jharkhand, 2013 (1) Crimes 485 (Jharkhand), and granted margin of one year to the juvenile. The court also relied upon the transfer certificate of class-5 of the accused and found his date of birth to be 01.08.2002 according to which his age came to 16 years and 5 months.

6. The revisionist/complainant/informant approached the appellate court unsuccessfully and hence this revision.

7. Learned counsel for the revisionist has submitted that the margin of one year granted to the revisionist on lower side is not in accordance with law. He has submitted that in the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, there was provision of giving margin of one year on lower side in the age determined by ossification test of the accused, but in the Juvenile Justice (Care and Protection of Children) Act, 2015, there is no such provision and, therefore, the margin of one year in age on lower side granted to the accused by the Juvenile Justice Board and affirmed by the appellate court is not in accordance with law and both the orders deserve to be set aside.

8. Learned counsel for the respondent no.2 has vehemently opposed the submissions and has submitted that the Apex Court in the case of **Darga Ram @ Gunga State of Rajasthan (2015) 2 Supreme Court Cases 775** has held that normal rule of variation of plus (+) and minus (-) two years in the age determined by the ossification test is acceptable. He has further relied upon the judgment of Apex Court in the case of **Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Ors, (1982) 2 SCC 538**, wherein the Apex Court held that there is margin of error in age ascertained by radiological and orthopedic test of two years on either side. To support the same reliance on the judgment in the case of **Pawan Kumar Vs. State of U.P. and Ors (2023) 15 S.C.R. 261**.

9. After hearing the rival submissions, this Court finds that the Juvenile Justice Board, Varanasi, has considered the ossification test report of the respondent no.2 and also his transfer certificate issued by the school which proved his date of birth as 01.08.2002. The Juvenile Justice Board, although found that as per the certificate of the school of respondent no.2 his age comes to 16 years and 5 months, but it relied upon the medical evidence and after granting margin of one year on the lower side declared his age as 17 years and 6 months.

10. The appellate court has discarded the medical evidence on the ground that when there was transfer certificate of the accused respondent no.2 available, there was no justification for the Board to have ordered ossification test of the accused as per section 94(2)(iii) of the Juvenile Justice Board.

11. This Court finds that neither before the Juvenile Justice Board nor before the appellate court any evidence contradicting the date of birth of the respondent no.2 in the school record was filed. Therefore, the conclusions arrived at by the both courts below are in accordance with law.

12. The Apex Court in the Case of **Sanjeev Kumar Gupta Vs. State of U.P., A.I.R., (2019) SCC 370** has discussed the distinction between J.J. Act, 2015 and J.J. Act, 2000 read with J.J. Rules, 2007 which is as follows:-

".....Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category. "

13. Therefore, it is clear that the courts below have made inquiry regarding age of the juvenile. While the Juvenile Justice Board has relied upon the ossification test report of the respondent no.2, the appellate court has discounted the same and only relied upon date mentioned in the transfer certificate of juvenile of the school and declared the respondent no.2 juvenile. Hence the main ground raised by the learned counsel for the revisionist that one year margin in age given to the respondent no.2 on lower side as per Rule 12 of the J.J. Rules, 2007 is devoid of merits, since the order of the appellate court is not passed on grant of any margin to the respondent no.2 on the basis of ossification test report. It is based only on the date of his birth mentioned in school record.

14. The orders passed by the courts below do not require any interference and are hereby **confirmed**.

15. The revision is **dismissed**.

16. Let this order be communicated to the Juvenile Justice Board, Varanasi, within a week by the Registrar (compliance) of this Court.

September 11, 2025
Abhishek

(Siddharth,J.)