

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 189 of 2013

Arising out of P.S. Case No. -269 Year- 2005 Thana –Bihpur
(Bhawanipur) District- BHAGALPUR

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Ram Balak Choudhary S/o Late Kulanand Choudhary R/o Village -
Mauzmabad, P.S. Bhawanipur, District – Bhagalpur.

.....Petitioner/s

Versus

1. The State of Bihar.

2. Bauka Choudhary S/o Shri Awadh Kishore Choudhary R/o
Village - Mauzmabad, P.S. Bhawanipur, District – Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prem Kumar Thakur, Adv.

For the State : Mr. R.B. Roy “Raman” APP.

For the Opposite Party No. 2 : Mr. Vikash Kumar, Adv.

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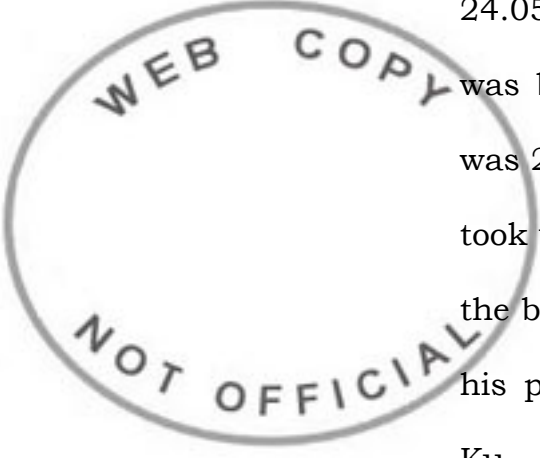
CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 17-03-2015

01. The Petitioner who is the Informant seeks revision of the order dated 10.01.2013 passed in Cr. Misc. No. 1 of 2012 arising out of S.T. No. 1486 of 2006 concerning Split up S.T. No. 1486B of 2006 passed by 5th Additional Sessions Judge, Naugachia, Bhagalpur by which he has declared the Opposite Party No. 2 a juvenile.

02. The case of the Petitioner was that on the date of occurrence the accused persons including the Opposite Party No. 2 committed the murder of the brother of the Informant on 29.12.2005. Charge-sheet was subsequently submitted on 22.03.2006 against all the four accused persons and the case was committed to the Court of Sessions for trial. On 10.10.2007 charges were framed against the Opposite



Party No. 2 and other accused whereafter 14 witnesses including Investigating Officer and Doctor were examined. On 24.05.2012 when the statement under Section 313 Cr.P.C. was being recorded the Opposite Party No. 2 stated that he was 28 years of age. On the date fixed for argument the Court took up the matter of juvenility of the Opposite Party No. 2 on the basis of a Petition having been filed on 08.06.2012 basing his plea on one transfer certificate issued by Principal, Ra. Ku. H. Gandhi Madhya Vidyalay, Alang, Anchal Sabour, Bhagalpur.

03. Then an inquiry was conducted by the 5th Additional Sessions Judge, Naugachia himself where a number of persons including the mother of the Opposite Party No. 2 were examined. He, however, did not rely on the documents as proof of age and rejected the same. He, simultaneously, directed the Medical Board to conduct a medical examination of the Opposite Party No. 2 which held him to be between 25 to 30 years on the basis of the X-ray Report. The Court below corroborated the assessment of the Medical Board with the statement of the mother and then declared Opposite Party No. 2 a juvenile.

04. It has been submitted on behalf of the Petitioner that once the Court below had rejected the documents which were authentic the prayer of juvenility should have been refused and further Medical examination should not have been held. The further submission is that the

evidence of the mother which has been relied upon by the Court below is not only in-conclusive but also vague which does not lend basis to the credence of age. Moreover, the wide range of 25 to 30 years given by the Medical Board is not fit to be relied upon.

05. On the other hand, Counsel for the Opposite Party No. 2 relies upon four decisions reported in (2009) 13 SCC 211 (Hari Ram vs. State of Rajasthan and Anr), (2009) 6 SCC 681 (Ram Suresh Singh vs. Prabhat Singh @ Chhotu Singh and Anr.), 2013 (1) PLJR SC 156 (Ashwani Kumar Saxena vs. State of M.P.) and 2015(1) 432 (Durga Ram @ Gunga vs. State of Rajasthan) which are being discussed below.

06. In (2009) 13 SCC 211, the Apex Court had held that wherever two views are possible the Court should take a liberal view in borderline cases which is a well-established principle of law.

07. In (2009) 6 SCC 681, the Apex Court had held that an error of two years on either side in determining the age is possible when ascertained by radiological examination and, hence, the lower or the upper age or overage which should be taken into consideration depending on the facts of the case.

08. In 2013(1) PLJR SC 156, the Apex Court held that when a duly constituted Medical Board had assessed the age the Court should give benefit of doubt considering age on

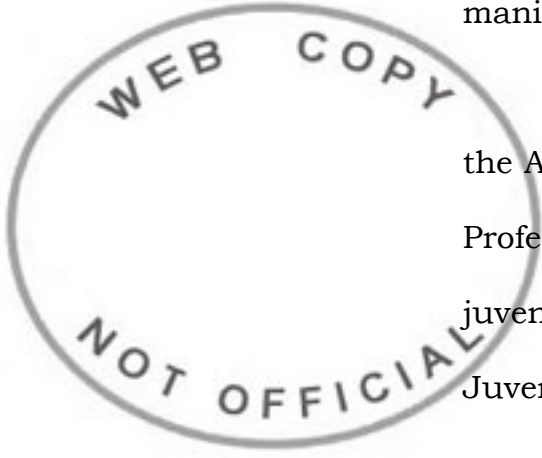
lower side and a margin of one year. A Medical Board could be constituted when the documents were found fabricated and manipulated.

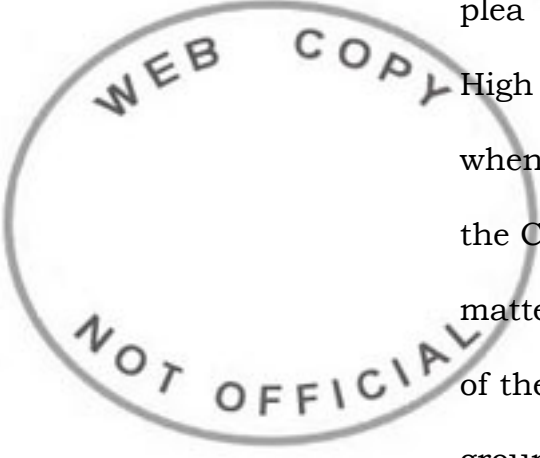
09. In 2015(1) PLJR 432 Paragraph 15 once again the Apex Court considered that the Medical Board comprising Professors of different departments must get respect and a juvenile may be entitled to benefit in terms of Rule 12(3)(b) of Juvenile Justice Act.

10. On going through the decisions cited by the Opposite Party No. 2, I find that even though the Apex Court has held in matters of juvenility liberal view be taken but no decision says that Courts may do away with the procedure prescribed in law. Now to discuss the decisions.

11. In (2009) 13 SCC 211, the facts of the case were that the Appellant had been determined to be 16 years 13 days on the date of occurrence. The Court below had rejected the plea on the ground of old law on point of juvenility. However, the Apex Court considered the subsequent amendments in the Act and that as per the same it would cover a person below the age of 18 and, hence, the Appellant would be entitled to the benefit of Juvenile Justice Act. In such circumstances, the said decision is not applicable to the facts of the case.

12. In the case of Ram Suresh Singh vs. Prabhat Singh @ Chhotu Singh and Anr. reported in (2009) 6 SCC 681, I find that the facts of the case were that the Petitioner





claimed juvenility on the basis of School Certificates but Principal Judge, Juvenile Justice Board had refused such plea on the estimated age of Medical Board. In revision, the High Court set aside the order on the point that it is only when the documents in proof of age were disbelieved could the Court have relied upon the evidence of Medical Board. The matter traveled to the Apex Court on the prayer of the uncle of the deceased which turned down his plea on the very same ground.

13. It thus decides against the objection of the Petitioner of the instant application that Principal Judge could not rely on the medical assessment once it had rejected the documents in proof of age.

14. In the case of Ashwani Kumar Saxena vs. State of M.P. reported in 2013 (1) PLJR 156, the Supreme Court, the facts were that the plea of juvenility of the Appellant had been turned down by the Chief Judicial Magistrate and the 1st Additional Sessions Judge as also the High Court. The Apex Court having considered the scheme of the Act explained the nature of inquiry that had to be made as per Section 7A Juvenile Justice Act and Rule 12 and explained the role of Courts and that Medical opinion is required only if documents, in proof of age are unavailable and benefit of one year on lower side:-

“33. The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of

protection.

34. *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 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."*

15. It held that roving inquiry need not be conducted in such situations.

16. In the case of Durga Ram @ Gunga vs. State of Rajasthan reported in 2015(1) PLJR 432, the facts of the case is that it was before the Supreme Court that for the first time a plea of juvenility had been taken by the appellant. The Court then directed the Juvenile Justice Board to constitute a team of Doctors for radiological examination of the Appellant to determine the age of the Appellant in April, 1998. The opinion was that he was between 30 to 36 years on the date of examination the Apex Court took the average of two extremities and concluded that the Appellant was 33 years of age on the date of examination which brought him within the ambit of Juvenile Justice Act. I must, however, quote Paragraphs 15, 16 & 17 as hereunder:-

"15. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine has determined his age to be "about" 33years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination no





matter advances made in that field. That being so in terms of Rule 12(3)(b) the appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant my be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3)(b) (supra) which would then bring him to be 17 years and 2 months old,



therefore, a juvenile. [Underlining Mine]

16. In the totality of the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the appellant to be a juvenile as on the date of the occurrence no matter the offence committed by him is heinous and but for the protection available to him under the Act the appellant may have deserved the severest punishment permissible under law. The fact that the appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail one who has been found guilty of rape and murder of an innocent young child.

17. In the result, this appeal succeeds but only in part and to the extent that while the conviction of the appellant for offences under Sections 302 and 376 of IPC is affirmed the sentence awarded to him shall stand set aside with a direction that the appellant shall be set free from prison unless required in connection with any other case.”

Hence, I find that the Apex Court while calculating the age was all along conscious of the fact that the Appellant had remanded in custody for 14 years in the serious matter.

17. In the instant case, I find that when a plea of juvenility was taken by the Opposite Party No. 2 on 08.03.2010 it was not decided by the Court in seisin so he once again filed an application on 08.06.2012 at the stage of arguments. In consequence, the Head Teacher of Middle School through DEO, Bhagalpur was summoned to appear along with the Admission Register. Summons were also issued to the parents and simultaneously to the Civil Surgeon, Bhagalpur to constitute a Medical Board to assess

the age of Bauka Choudhary in case the first School Certificate were not found fit, trustworthy, genuine and satisfactory for consideration as per Rule 12.

18. During Inquiry, the mother of the Opposite Party No. 2, Sabo Devi appeared as Inquiry Witness No. 1. She stated that she was married in the year 1980 at the age of 12/13 years and eight children were born. Opposite Party No. 2 was her fourth issue. According to her the first child was born after three years of her marriage, the second child was 2 to 3 years later to the birth of the first child, the third child was born five years later and Opposite Party No. 2 was born 4/5 years in summer season.

On a fair assessment of her evidence, I would be of the opinion that it is not only vague but also speculative and not worth reliance.

19. However, according to the assessment of the Court the age of the Opposite Party No. 2 on the date of statement i.e. 08.08.2012 was 20 years and he was sent to jail at the age of 13/14 years in the year 2006. He tested the testimony of the mother from various angles and concluded that the Opposite Party No. 2 may have been born roughly between 1992 to 94 and, hence, when the occurrence took place on 29.12.2005 he was between 14/15 years of age.

20. Inquiry Witness No. 2 who brought the Admission Register and such document of the School was rejected by the Court below on the basis of its doubtful

nature.

21. As for Inquiry Witness No. 3, Dr. Anand Kumar Murarka he opined that the Opposite Party No. 2 on the date of examination was found above 18 years but approximately between 25 to 30 years.

22. The Court then examined the X-ray Reports and on Modi's Medical tested its Jurisprudence and held him to be 25 years i.e. the lower side of age and further gave a margin of one year and as per Rule 12 and held him to be 17 years 4 months and 5 days.

23. Rule 12 of Juvenile Justice Act is quoted below:-

"12. Procedure to be followed in determination of age. – (1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and sent him to the observation home or in jail.

(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 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 order 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 9a) (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. [Underlining Mine]

24. Thus, we find that Rule 9(3)(b) prescribes that medical examination has to be held only after the documents are held untrustworthy. In the present case even before the documents were tested during inquiry simultaneously the Medical Board was constituted and relied upon by the Court below. Following such a procedure may be a mere irregularity but when scales of justice are to be balanced and equal for both sides. I would be inclined to discredit such a Procedure.

25. Moreover, when the Supreme Court had taken the mean age where a margin of 6 years had been given by the Medical Board in (2015) 1 PLJR 432 there was no reason

why the Court below in the instant case should have simply taken minimum age of 20 years and thereafter given another one year as concession and declared him a juvenile.

26. For the reasons stated above, I would be inclined to allow this application and set aside the order dated 10.01.2013 passed in Cr. Misc. No. 1 of 2012 arising out of S.T. No. 1486 of 2006 concerning Split up S.T. No 1486B of 2006.

27. The Application stands allowed with a direction to the Trial Court to conclude the Trial within next thirty days without granting unnecessary adjournment to any party.

(Anjana Prakash, J.)

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