

hvn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 47 OF 2015**

Kisan Teja Chavan	Versus	... Applicant
State of Maharashtra		... Respondent

Mr.Mohammed Umar Kazi for the applicant.

Ms V.S. Mhaispurkar, A.P.P. fro the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 10, 2015**

P.C.

Rule. Heard forthwith.

2. Heard learned counsel for the applicant and learned A.P.P. for the State.

3. A short question which arises for determination in the present application is what would be the age of the accused/applicant's son, who is declared to be aged in between 18 to 20 years by the Medical Officer on the basis of radiological test.

4. The son of the applicant was arrested by Manpada Police Station on 21st December, 2013 in Crime No. I-587 of 2013 for the offence punishable under section 302 read with 34 of Indian Penal Code and was remanded to the custody from time to time. He was chartesheeted as accused no.3. His name is Vijay Kisan Chavan.

5. The father moved the court of Magistrate with a prayer that the accused no. 3 Vijay Kisan Chavan had not completed 18 years of age on the date of alleged incident. Learned Magistrate held an enquiry and declared that he was juvenile in conflict with law. The state had filed revision application before the Sessions Court. The Sessions Court remanded the matter back to the Magistrate for fresh enquiry in accordance with the law. During the course of fresh enquiry, learned Magistrate came to the conclusion that the son of the applicant was at least 18 years of age and was not entitled to any benefit under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereafter "Juvenile Justice Act"). The applicant moved Sessions Court by filing revision application. The revision application has been dismissed.

6. The case of the applicant is based on the school leaving certificate issued by the school situated at Karnataka. The school leaving certificate issued to the applicant stated that the applicant's son's date of birth was 26th June, 1997. The date of incident was 22nd December, 2013. Obviously, if this certificate was to be believed, the son of the applicant was less than 18 years of age. However, there is one more certificate issued by the same school in which the date of birth of the son of the applicant is stated to be 26th June, 1987. If this date is considered to be the date of birth of the applicant's son, obviously he was more than 18 years of his age on the date of incident. The Principal of the school was examined and he was not able to give any reasonable explanation as to why two admission registers were maintained by the school. There appear to be large scale discrepancies in the admission register and therefore, it was not found to be reliable. What is interesting to note is that the son of the applicant left the school in the year 2002 after passing fourth standard. If the contention of the applicant is accepted that his son was borne on 26th June, 1997, then applicant's son

was five years old when he completed his fourth standard of education. Obviously this was impossible. The learned Magistrate and the learned Sessions Court have rightly rejected the school record in respect of date of birth of the son of the applicant. Therefore, the only material available on the basis of which the date of birth of the applicant's son could have been determined was the ossification test conducted by Doctor Dhavan. She has been examined as witness. She has stated that on the basis of ossification test, the age of the son of the applicant was between 18 to 20 years and that he was, in any case, not less than 18 years old. The evidence of Doctor has been accepted by the learned Magistrate as well as by the learned Sessions Court. Therefore, the plea of the applicant's son that he was juvenile in conflict with law on the date of incident has been rejected. Learned counsel Mr. Kazi has relied upon the judgment of the Hon'ble Supreme court reported in **Rajinder Chandra Versus State of Chhattisgarh and another**¹ The following observations of the Hon'ble Supreme Court has have been brought to my notice by the learned counsel :

“5. It is true that the age of accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In Arnit Das v. State of Bihar. MANU/SC/0376/2000 : 2000 Cri L J 2971, this court has, on a review of judicial opinion, held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is 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. The law, so laid down by this court, squarely applies to the facts of the present case.”

7. It is therefore, submitted that the benefit of error of one year on lower side should be given to the son of the applicant. It is now well settled

1 (2002) 2 Supreme Court Cases 287

that the opinion given by the Medical Officer with regard to the age is not a conclusive evidence and not the proof of the age of the person examined by the Medical Officer. It is only an opinion. The Division Bench of Madras High Court in the case of **Shanmugham Versus the State**² has observed in paragraph 5 as under :

“5. Taking up first for consideration the certificate given by the Radiologist, we find from the certificate that the Radiologist has specifically confined his opinion to the fusion of the iliac crest. He has also reported that the lower end of radius and the lower end of ulna, which, fuse at the age of 18, have become fused. Then has referred to the fusion of the iliac crest. No doubt in Pillai's table in Modi's Medical Jurisprudence, the age of fusion of the crest of ilium has been given as 14 to 18 years. On that score alone, we are not prepared to accept the contention that the appellant would have only completed the age of 18 and would not have completed the age of 21 on the date of Radiological examination. This is because of the fact that the fusion of bones occur for different persons at different times and the variation is due to multiplicity of causes, such as, the health conditions of the family in which the person was born, the climatic conditions in which he is living, the dietary habits he is accustomed to, the type of life he is leading etc. Consequently, the determination of age on the basis of radiological examination can only be an approximate factor and it cannot be taken as a decisive and incontrovertible feature. Even modi has pointed out that a blind and mechanical view regarding the age of a person, can not be adopted solely on the basis of the evidence afforded by the radiological examination. AT page 31 of Modi's Text Book of Medical Jurisprudence and Toxicology, 20th Edn. It has been stated as follows :-

“In ascertaining the age of young persons radiograms of any of the main joints of the upper or the lower extremity of both sides of the body should be taken, an opinion should

be given according to the following table, but it must be remembered that too much reliance should not be placed on this table as it merely indicates an average and is likely to vary in individual cases even of the same province owing to the eccentricities of development.”

Courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person, but the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error.”

8. In the present case in my opinion, the benefit of margin of error should go to the applicant at lower side of the age (18 years) mentioned by Doctor. In the circumstances, I am of the view that the learned Magistrate and Sessions Court had committed error in placing too much reliance on the evidence of Dr. Dhavan with regard to ossification test.

9. In the result, application is allowed.

The orders dated 18th August, 2014 passed by the Magistrate in Regular Criminal Case No.193 of 2014 and order dated 11th November, 2014 passed by the learned Sessions Judge in Cri. Revn. Appln No. 115 of 2014 are set aside.

The applicant is declared to be juvenile in conflict with law on the date of the commission of alleged offence i.e. 22nd December, 2013.

Criminal application stands disposed of accordingly.

(JUDGE)