

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.02.18 17:11
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CRR No. 2829 of 2013 (O/M)

Date of decision : 18.2.2015

Seema

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jasjit Singh Bedi, Senior Advocate, with,
Mr. Sunil Sihag, Advocate, for the petitioner.

Mr. Satish Saini, Deputy A.G., Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Seema, accused/revisionist herein, has filed this revision against the order dated 22.8.2013, passed by the learned Additional Sessions Judge, Rohtak, vide which it was held that the date of birth of the accused/revisionist herein was 30.7.1988. Since the occurrence took place on 24.10.2006, hence it was held that she (accused/revisionist herein) was more than 18 years of age at the time of commission of crime. However, the application of the co-accused/non-revisionist Reetu @ Neetu was allowed and she was held to be of 15 years and 3 months and a juvenile in conflict with law.

Before the learned Additional Sessions Judge, Rohtak, two applications were filed for determination of age; one was filed by accused Reetu @ Neetu (non-revisionist) and the other by accused Seema (revisionist herein), daughters of Suresh, residents of village Sunarian Kalan, District Rohtak, who were summoned under Section 319 Cr.P.C. to face trial for offence alongwith other accused under Sections 304-B and 498-A IPC. Accused Seema (revisionist herein) had stated in her statement that she was a juvenile at the time of occurrence. Her date of birth is 16.4.1990. Therefore, she prayed that she be declared a juvenile. Before the learned Additional Sessions Judge, Rohtak, both the parties led the evidence.

I have heard learned senior counsel for the accused/revisionist herein, learned Deputy Advocate General for the State and have also carefully gone through the file.

Before the learned Additional Sessions Judge, Rohtak, accused/revisionist herein had examine her mother Shakuntla as AW1 and also got produced school record. The Public Prosecutor/respondent examined Mrs. Santosh, Anganwari Worker as RW2, Santosh Kumari, JBT teacher, Government Primary School, Sunarian Kalan, Rohtak as RW3 and some other witnesses. The impugned order dated 22.8.2013, passed by the learned Additional Sessions Judge, Rohtak, shows that as per the statement of Ram Kaur, JBT teacher, Government Primary School, Sunarian Kalan, Rohtak (AW3), accused Seema (revisionist herein) remained

admitted in Government Primary School, Sunarian Kalan, Rohtak, from 1996 to 2011 and she was admitted in 2nd class. As per the school record, her (Seema's) date of birth was 16.4.1990 and the same was incorporated in the school record. It further comes out that at the time of admission in 2nd class in the said school, the parents of accused Seema (revisionist herein) did not furnish the previous school leaving certificate of her previous school and rather, affidavit of the father, attested on 17.5.1996, was filed. The statement of mother of the accused Seema (revisionist herein) further shows that she has four children i.e. three daughters and one son. Seema is the 3rd child and according to her, she was born on 16.4.1990.

The learned Additional Sessions Judge, Rohtak, placed heavy reliance upon the statement made by Mrs. Santosh, Anganwari Worker (RW2), who stated that she maintained the record about the date of birth of children of Shakuntla and Suresh. According to her, 3rd child, a daughter, was born on 30.7.1988, whereas 4th child, another daughter, of Shakuntla and Suresh was born on 21.7.1991. She produced survey record (Ex.R5), wherein the names of the children had been mentioned as Babli and Soni and it was stated that after the birth, their names were changed. The date of birth of Babli was mentioned as 30.7.1988. Therefore, relying upon the survey certificate (Ex.R5), the learned Additional Sessions Judge, Rohtak, came to the conclusion that the date of

birth of Seema was 30.7.1988.

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (in short '2007 Rules') deals with the procedure to be followed in determination of the age, which is reproduced as under :-

“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 or 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 appearance or documents, if available, and send 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 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.”

Rule 12 of the 2007 Rules, reproduced above, clearly shows that for determination of age, the reliance is to be placed on matriculation or equivalent certificates, if available. In the present case, Clause (a)(i) is not applicable as the matriculation certificate is not available. Second, comes date of birth from the school first attended other than a play school and in the absence thereof, the birth certificate issued by a Corporation or a Municipal Authority or a Panchayat can be relied upon. In the present case, the birth certificate from the school record, in which Seema got admission in the second class, was produced and the certificate from the school

first attended by her was not produced. The survey record (Ex.R5) of the Anganwari Worker is not a birth certificate, issued by a Corporation, a Municipal Authority or a Panchayat. Therefore, in the absence of the above-noted, medical opinion is to be sought from the Medical Board regarding the age of a juvenile or a child.

At the very outset, I am of the view that the order of the learned Additional Sessions Judge, Rohtak, placing heavy reliance upon the survey record (Ex.R5), is contrary to the procedure for determining age as laid down in Rule 12 of the 2007 Rules and the impugned order dated 22.8.2013, passed by the learned Additional Sessions Judge, Rohtak, is liable to be set aside on this score only.

Now, the question is as to whether the date of birth of the accused/revisionist herein is to be accepted as 30.7.1988 or 16.4.1990 ?

In the school record where accused Seema (revisionist herein) was admitted in the year 1996 i.e. much before the commission of crime in the year 2006, her date of birth was mentioned as 16.4.1990. The statement of Ram Kaur (AW3) shows that accused Seema (revisionist herein) was admitted in second class on 21.5.1996. She further stated that the affidavit of the father of the accused/revisionist herein attested on 17.5.1996 regarding the date of her birth, was produced at the time of admission. There was no record of her having studied in any other school. The copy of the Migration Certificate is Annexure-P-3. Therefore, from the

statement of Ram Kaur (AW3), it is proved that at the time of admission in the school on the basis of affidavit of the father dated 17.5.1996, Seema (accused/revisionist herein) was admitted in the school on 21.5.1996 in second class and her date of birth in the school was recorded as 16.4.1990. She was withdrawn from the school on 29.1.2013. The copy of the affidavit of father of the accused/revisionist herein is Annexure-P-4 and was marked before the trial Court as Mark 'B'. In the affidavit, it is stated that Seema Devi was never a student of Government school or any recognized school. It being so, it is clear that Seema Devi was, for the first time, admitted in Government Primary School, Sunarian Kalan, Rohtak, in second class, wherein on the basis of affidavit of the father dated 17.5.1996, her date of birth was recorded as 16.4.1990 in school record. In this way, the case of the present accused/revisionist is covered under Rule 12 (3)(a)(ii) of the 2007 Rules. The alleged occurrence took place on 24.10.2006, which means that at the time of commission of crime, Seema (accused/revisionist herein) was of 16 years, 6 months and 8 days and was a juvenile offender.

The Apex Court in the authoritative pronouncement in Jodhbir Singh Versus State of Punjab, 2013 (1) RCR (Criminal) 272 held that primary importance to the date of birth certificate issued by the school first attended, the genuineness of which is not disputed, is to be given. There is no question of relying upon the certificate issued by the village Chowkidar. The authority was followed later on

in various cases by this Court.

It being so, I am of the view that the impugned order dated 22.8.2013, passed by the learned Additional Sessions Judge, Rohtak, is not sustainable in the eyes of law. Accordingly, the same is set aside and it is declared that accused Seema (revisionist herein) was a juvenile on the day of commission of crime i.e. 24.10.2006, as held above. Therefore, accused Seema (revisionist herein) is to be treated as a juvenile and accordingly, she could not be tried before the learned Additional Sessions Judge, Rohtak, and is to be tried by the Juvenile Justice Board. Accordingly, the present revision is allowed.

The learned Additional Sessions Judge, Rohtak, is directed to take necessary steps, in the light of this order.

(KULDIP SINGH)
JUDGE

18.2.2015
sjks