

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.1728 OF 2013 (O&M)

Date of decision: 27.04.2016

Madan Lal

.....Petitioner

versus

U.T. Chandigarh

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Raghav Gulati, Advocate for
Mr.P.K.Chugh, Advocate for the petitioner
Mr.J.S.Toor, A.P.P. U.T. Chandigarh
Mr.Siddharth Sharma, Advocate for the respondent No.2

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 11.3.2013, passed by learned Additional Sessions Judge, Chandigarh, vide which, Rakesh Kumar – respondent No.2 was declared juvenile offender. Accordingly, the prosecution was directed to present challan against Rakesh Kumar before the Juvenile Justice Board.

The brief background of the case is that Rakesh Kumar along with Sanchit Verma and Nazir Khan is alleged to have committed the offence under Sections 302, 307, 394, 397, 460 read with Section 34 IPC. The offence was committed on 27.7.2012.

Before the learned Additional Sessions Judge, an application was filed on 5.2.2013 for declaring Rakesh Kumar as juvenile offender. The learned Additional Sessions Judge discussed the school transfer certificate, where date of birth of Rakesh Kumar is mentioned as 10.8.1996. No other record was produced nor the certificate of school first attended, matriculation certificate or birth certificate issued by the Municipal Authority was produced. The learned Additional Sessions Judge then relied upon the ossification test, where it was reported that at the time of his examination on 16.2.2013, his bone age was 19 to 20 years and dental age was 18 to 20 years. Therefore, learned Additional Sessions Judge held that his age will fall in the range of 17 to 18 ½ years. Therefore, it is a border line case. Consequently, benefit was given to the juvenile offender and he was declared juvenile offender.

I have heard learned counsel for the parties and have also carefully gone through the file.

The procedure for declaring a person as juvenile offender in conflict with law is provided under Section 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (in short, 'the Rule'). Rule 12(3) provides the documents which could be taken into evidence. The same is reproduced as under:-

“12. Procedure to be followed in determination of Age.

.....

(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.

Here in this case, documents mentioned in Rule 12(3) are not available. The school transfer certificate Annexure P2 is from a school in Pratnagar, where he studied upto 8th class. Therefore, the same cannot be relied upon. So far as opinion of the doctor is concerned, under clause 3(b) the medical opinion is to be sought from duly constituted medical board. Here the opinion is not by Medical Board but by two doctors, one is dentist and other is neurologist who

gave the respective dental and bone age. Therefore, same also cannot be relied upon. Now, this Court is to fall back on the statement made by the mother of the applicant. She has stated in cross-examination that his elder son is 24 years of age and that Rakesh was born 1- ½ or 2 years after the birth of the elder son. Considering that he was born two years after the birth of elder son of Asha Devi, mother of the applicant, it would mean that as on the date of making of statement i.e. 12.2.2013, the age of the applicant was 22 years. Meaning thereby, as on 27.7.2012 (the date of commission of crime), his age was between 20 to 21 years. Therefore, it cannot be said that he was below 18 years of age on the date of commission of crime. Age in case of juvenile offender is 18 years.

It being so, the respondent No.2 was wrongly declared as juvenile offender. Hence, the impugned order is set aside and the respondent No.2 is ordered to be tried by learned Additional Sessions Judge, Chandigarh.

The challan presented before the Juvenile Justice Board shall stand transferred to the Court of learned Sessions Judge, Chandigarh, who can retain the same himself or entrust the same to other Additional Sessions Judge, since main case against two remaining accused is stated to have already been decided.

The revision stands allowed accordingly.

27.04.2016
gk

(Kuldip Singh)
Judge