

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Revision No.856 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

Chanchal Kumari, daughter of Nand Kishore Sharma, resident of Mohalla- Badhai Tola, Jagadishpur, Ward No.13, P.S. Jagadishpur, District- Bhojpur.

.... .... Petitioner

Versus

1. The State of Bihar
2. Raju Choudhary, son of Laxman Choudhary, resident of Mohalla-Purana Pokhara, Ward No.11, P.S.- Jagdishpur, District – Bhojpur.
3. Mukesh Choudhary, son of Hansraj Choudhary, resident of Mohalla- Purana Pokhara, Ward No.11, P.s.- Jagdishpur, District- Bhojpur.

.... .... Respondents

### Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the State : Mr. Nirmal Kumar Sinha, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date: 29-08-2017**

The petitioner is challenging the order dated 17.2.2016 passed by A.D.J.-Ist, Bhojpur, Ara in Sessions Trial No.53 of 2015, arises out of Jagdishpur P.S. Case No.32 of 2014, whereby he has determined age of the two accused persons in the case as juvenile on the basis of the assessment of age made by the Medical Board. The petitioner is the informant of the case.

2. Learned counsel appearing on behalf of the petitioner submits that the learned Juvenile Justice Board assessed the age of the opposite party nos.2 and 3 merely on the basis of the opinion of the Medical Board and has not considered that the father of one of the accused Mukesh Choudhary has disclosed that he was 17 years of age



in the year 2010, so in the year 2014, he would be 21 years of age. Learned counsel also submits that in the voter list the age of the accused persons is 23 and 24 years respectively and the petitioners are accused of committing rape.

3. Having considered rival submissions and on perusal of the record, it appears that the only material before the Additional District and Sessions Judge was of the opinion of the Medical Board having examined both accused on 4.9.2015 assessed their age in between 18 to 20 years. However, the alleged date of occurrence is 13.11.2014 approximately one year prior to the examination of the Medical Board, so their age on the day of occurrence would be in between 17 to 19 years of age. This Court finds that the procedure to be followed while determining age is the Rule 11 of the Bihar Juvenile Justice (Care and Protection of Children) Rules 2012 specially rule 11(3) contains the provision and procedure for determination of the age of the concerned juvenile. Rule 11 is quoted herein below :

**“11. 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 the Committee referred to in Rule 20 of these rules, as the case may be, 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 the Committee shall decide the juvenility or otherwise of the juvenile or the child in need of care and protection, 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 prison as the case may be.

(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 the Committee, as the case may be, by seeking evidence by obtaining :

(a) (i) the matriculation or equivalent certificate, if available; and/or

(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 municipal corporation or a municipal authority or a panchayat; and

(b) only in the absence of either (i) and/or (ii) or (iii) of clause (a) above, or in case the court or the board or the committee finds it necessary, 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 recorded by them, may, if to be considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of 6



months 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 proof of the age as regards such child or the juvenile in conflict with law.

(4) The duly constituted Board shall submit medical opinion to the concerned authority within one week from the date of receipt of the order.

(5) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the proof specific in sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the parent/guardian/person concerned.

(6) To avoid misuse of the provision of the Rules, the Social Welfare Department, Director, Social Welfare or the District Magistrate of the concerned district may set up a medical board, for the determination of age of such juveniles in conflict with law residing in observation homes, who apparently appear to be above 18 years of age. The constitution of medical board and final report from the board will be given within two weeks from the date of order issued by the concerned authorities.”



4. The said Rule is applicable in the present case as the alleged offence is dated 13.11.2014. In order to determine the age the matriculation or equivalent certificate is the first document to be looked into if available and/or the date of birth certificate from the school first attended and in absence of these two documents the birth certificate given by the Municipal Corporation or a Municipal Authority or a Panchayat. Only in absence of the aforesaid documents or even if the said documents are available and the Court finds if necessary the medical opinion will be sought from a duly constituted Medical Board which will declare the age of juvenile. This Rule also speaks of giving a margin of six months to the lower side considering the age determined by Medical Board. In the present case, no educational certificate or birth certificate was available, so in absence of these documents the court below got the accused persons examined by a duly constituted Medical Board and so on the day of alleged occurrence the accused persons age is between 17 to 19 years of age, so considering their age on lower side within the margin of six months their age would be around of 16 and ½ years. The accused persons opposite party nos.2 and 3 are less than 18 years of age on the alleged day of occurrence. One of the fathers of the accused in his oral statement stated the age of his son 17 years in the year 2010 but in view of the Rules such statement cannot be a conclusive proof of the



age, therefore, finding no illegality in the age determination of the opposite party nos.2 and 3.

5. This revision application stands dismissed at the admission stage itself.

**(Arun Kumar, J)**

N.H./-

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