

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.684 of 2016

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

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1. Shiv Kumar Rai Son of late Ram Lakhan Rai R/o Village- Chainipur, P.S-
Hathua, District Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rohit Rai Son of Oshihar Rai R/o Village- Chainipur, P.S- Hathua, District
Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey
For the Respondent/s : Mrs. Nirmala Kumari, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 10-01-2017

Heard learned counsel for the parties.

2. Putting to challenge the judgment and order, dated
07.06.2016, passed by the learned Sessions Judge, Gopalganj in
Criminal Appeal No. 79 of 2016, whereby he has refused to
interfere with an order dated 21.04.2016, passed by learned
Principal Magistrate, Juvenile Justice Board, Gopalganj (J.J.
Board) in J.E. No. 88 of 2015, corresponding to Hathua P.S.
Case No. 30 of 2015, declaring the Opposite party No.2 a
juvenile as on the date of the occurrence, present criminal
revision under Section 53 of the Juvenile Justice (Care and
Protection of Children) Act, 2000 has been filed.

3. The petitioner is the informant of the said Hathua P.



S. Case No. 30 of 2015, which discloses commission of offence punishable under Sections 341, 323, 324, 307, 379, 385, 504/34 of the Indian Penal Code to which Section 302 of the Indian Penal Code came to be subsequently added.

4. Facts for determination of the dispute involved in the present case are not much in dispute and are short.

5. The Opposite party No.2 is an accused in the aforesaid Hathua P. S. Case No. 30 of 2015, who was remanded to judicial custody after he surrendered in connection with the said case. After submission of the charge-sheet and taking of cognizance, the case was committed to the Court of Sessions whereafter it was transferred to the Court of learned Third Additional Sessions Judge, Gopalganj for trial and disposal. The Opposite party No.2 filed a petition claiming juvenility because of which the matter was referred to the Juvenile Justice Board for an enquiry to determine the age of Opposite party No.2. In support of his claim, a certificate issued on 09.05.2015 by the Headmaster, Rajkiya Utkramit Madhya Vidyalaya, Chanawe, showing Opposite party No.2 a student of the said School with entry of date of his birth as 01.02.2000, was presented before the J.J. Board for age determination enquiry. He also filed a petition making an allegation that the informant in collusion with the Headmaster of the said School had sprinkled ink over the portion of the attendance register, which contained name of the



Opposite party No.2 with his date of birth, making it ineligible.

6. This is to be kept in mind that date of occurrence of the said Hathua P. S. Case No. 30 of 2015 is 22.02.2015.

7. The informant contested the claim of Opposite party No.2 of being juvenile as on the date of occurrence relying on various documents. Considering that no authentic document as contemplated under Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (J.J. Rules, 2007), the J.J. Board sought opinion of the Medical Board. The medical examination of the Opposite party No.2 was held on 21.01.2016 and his age was, accordingly, assessed as 20 to 21 years as on that date. Applying the principle laid down in case of Supreme Court's decision in case of ***Darga Ram alias Gunga Vs. State of Rajasthan*** reported in ***(2015) 2 SCC 775***, the Juvenile Justice Board allowed variation of plus minus two years in upper age limit of 21 years and assessed his age as on the date of the occurrence to be 19 years as on the date of examination (21.01.2016) by the Medical Board. The J.J. Board allowed additional benefit of one year in terms of Rule 12(3) (b) of the J.J. Rules, 2007 and accordingly, held the Opposite party No.2 to be a juvenile as on the date of the occurrence (17 years and one month) by order dated 21.04.2016.

8. The petitioner, thereafter, preferred an appeal under Section 52 of the J.J. Act before learned Sessions Judge,



Gopalganj giving rise to Criminal Appeal No. 79 of 2016. Learned Sessions Judge, by the impugned order dated 07.06.2016 rejected the petitioner's appeal and thus, affirmed the order of the J.J. Board.

9. Mr. Ranjeet Kumar Pandey, learned counsel appearing on behalf of the petitioner challenging vehemently the impugned order has placed reliance on following Supreme Court's decisions:-

(i) (2012) 5 SCC 201 (Om Prakash Vs. State of Rajasthan)

(ii) (2012) 9 SCC 750 (Ashwani Kr. Saxena Vs. State of M.P.)

(iii) (2014) 4 SCC 28 (Sikander Mahto Vs. Tunna)

(iv) (2015) 7 SCC 773 (State of M.P. Vs. Anoop Singh)

10. He has submitted that the Courts below have failed to appreciate the spirit behind enactment of the welfare legislation like J.J. Act, which is not meant to provide statutory shelter under the guise of being a minor. According to him, in the absence of reliable and cogent proof in support of the plea of juvenility, the Courts below ought not to have declared Opposite party No.2 a juvenile. He has submitted that in order to remove definite evidence of real date of birth, Opposite party No.2, in connivance with the Headmaster of the School got ink sprinkled over the admission register so that the documentary proof of age could be completely vanished. He has also submitted that



once the medical Board assessed the age of Opposite party No.2 as on the date of the examination (21.01.2016) to be 20-21 years, the Courts below ought not to have given additional benefit of two years and further benefit of one year as prescribed under Rule 12(3) (b) of the J.J. Rules, 2007.

11. Learned counsel appearing on behalf of Opposite party No.2 on the other hand, has defended the impugned orders and has submitted that the order has been passed in conformity with the Supreme Court's decision in case of ***Darga Ram alias Gunga*** (supra).

12. In view of the submissions, which have been advanced on behalf of the petitioner relying on decisions of Supreme Court, it would be appropriate to refer briefly, to the case of the prosecution as narrated in the First Information Report based on the written report of the petitioner/informant. According to the First Information Report, on the portentous day, on 22.02.2015, when the informant's brother was returning to his house from Sugarcane field, the father of Opposite party No.2 and Opposite party No.2 intercepted him and asked as to why he (the deceased) had not been giving fishes in *rangdari* (extortion). The father of Opposite party No.2 is said to have started assaulting the victim by iron rod over his head with intention to kill him. Opposite party No.2 is said to have assaulted the victim with knife on his left hand. On hearing



cries, the petitioner rushed to rescue his brother on which the accused persons assaulted him also. Opposite party No.2 is said to have taken out a sum of Rs. 2,000/- from his pocket. The brother of the petitioner was, thereafter, taken to Hospital where the victim died after sometime.

13. Before I proceed further, I must take note of one aspect of the matter, which is also significant for just decision of the case.

14. While determining juvenility of Opposite party No.2, the Courts below have applied Juvenile Justice (Care and Protection of Children) Rules, 2007. The said Rules had been framed by the Central Government in exercise of power under Section 68 of the J.J. Act, 2000 as amended by J.J. (Amendment) Act, 2006. Section 68(1) of the Act is relevant and is being quoted hereinbelow:-

“68. Power to make rules.—[\(1\)](#) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

1[Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.]”

15. Bare reading of Section 68 of the J.J. Act, 2000 makes it clear that the Rules under the said provision are to be framed by the State Government to carry out the purpose of



the Act. The proviso to Section 68(1) of the Act enables the Central Government also to frame model Rules in respect of all or any of the matters with respect to which the State Government may make Rules under the said Sections and it further provides that where any such Model Rules have been framed in respect of such matters, they shall apply to the State until the rules in that matter is made by the State Government. It further envisages that while making of any such rules, the State Government so far as is practicable, shall conform to such model rules. Apparently, thus, till the State Government framed rules in exercise of power under Section 68(1) of the Act, J.J. Rules, 2007 were applicable for giving effect to various provisions of the J.J. Act, 2000.

16. Subsequently, in exercise of said power under Section 68 of the Act, the State Government of Bihar has made rules called "Bihar State Juvenile Justice (Care and Protection of Children) Rules, 2012" (hereinafter referred to as the **J.J. Rules, 2012**). With slight variance, the Bihar J.J. Rules, 2012 conforms to J.J. Rules, 2007. Rule 11 of the Bihar J.J. Rules, 2011 lays down the same procedure to be followed in determination of the age concerning a juvenile, when a claim of juvenility is raised under Section 7A of the J.J. Act, 2000. It is similar to the procedure prescribed under Rule 12 of the J.J. Rules, 2007, framed by the Central Government.



17. As has been noticed above, the J.J. Board has allowed additional benefit of one year in terms of lowering of the age of Opposite party No.2, in terms of Rule 12(3) (b) of the J.J. Rules, 2007. On comparison of Rule 12(3) (b) of the J.J. Rules, 2007 and 11(3) (b) of Bihar J.J. Rules, 2012, it can be easily discerned that whereas under J.J. Rules, 2007, in case exact assessment of the age cannot be done, the Court or the Board as the case may be for the reasons to be recorded allow benefit to the child by considering his/her age on lower side within the margin of *one year* but under Rule 11(3) (b) of the Bihar J.J. Rules, 2012, such benefit within the margin of only six months can be allowed. For quick reference I am extracting hereinbelow relevant portion of Rule 12(3) (b) of the J.J. Rules, 2007 and Rule 11 (3) (b) of the Bihar J.J. Rules, 2012:-

Rule 12 of the J.J. Rules, 2007

"12. Procedure to be followed in determination of age.- (1) x x x.

(2) xxxx

(3) xxxx

(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"

Rule 11 of the Bihar J.J. Rules, 2012

"11. (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 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."

18. I have no hesitation in holding that J.J. Rules, 2007 shall have no application within the State of Bihar after Bihar J.J. Rules, 2012 came into force with effect from 09.08.2012. In other words, Bihar J.J. Rules, 2012 shall apply to such enquiries initiated before coming into force of Bihar



J.J. Rules, 2012 and not J.J. Rules, 2007 framed by the Central Government. The age determination enquiry subsequent to 09.08.2012 within the State of Bihar is to be governed by Bihar J.J. Rules, 2012.

I am mindful of the fact that the J.J. Act, 2000 stands repealed with the enactment of Juvenile Justice (Care and protection of Children) Act, 2015 (hereinafter referred to as the J.J. Act, 2015) with effect from 01.01.2016, Section 110 of which contains similar rule making provision as Section 68 of the J.J. Act, 2000 contained. In exercise of the said power under J.J. Act, 2015, the Central Government has framed rules called "Juvenile Justice Model Rules, 2016". Accordingly, an age determination enquiry is now to be conducted in accordance with the provisions under J.J. Act, 2015 and the Rules framed thereunder, in respect of offence committed after the date of enforcement of J.J. Act, 2015.

19. Evidently, thus, the Board and the appellate Court below have wrongly given additional benefit of one year of lowering the age of Opposite party No.2 in terms of Rule 12(3) (b) of the J.J. Rules, 2007 instead of Rule 11(3) (b) of the Bihar J.J. Rules, 2012, since the date of enquiry is subsequent to coming into force of the Bihar J.J. Rules, 2012.

20. This will, however, not result into altering the ultimate result on question of determination of juvenility of



Opposite party No.2 in facts and circumstances of the present case. If the formula adopted by the J.J. Board and the Court below is approved, the petitioner will still remain a juvenile, even on application of Rule 11(3) (b) of the Bihar J.J. Rules, 2012 as in that circumstance the age of Opposite party No.2 will come to 17 years and seven months instead of 17 years and one month as on the date of the occurrence. The only question, therefore, is as to whether the principle applied by the Board and the appellate Court below suffers from any legal infirmity requiring interference by this Court.

21. I have noticed from the impugned orders that the J.J. Board has followed the Supreme Court's decisions in case of Darga Ram alias Gunga (supra).

22. I do not find any illegality or impropriety in following the method adopted by the Supreme Court for age determination in case exact assessment of age cannot be done by the Medical Board. In Case of **Ashwani Kumar Saxena Vs. State of M.P.** reported in **(2012) 9 SCC 750**, the Supreme Court has clearly laid down the procedure for age determination enquiry. In the said decision, it has been laid down that in age determination enquiry rules enable the J.J. Board or Court to seek evidence and in that process the Board of the Court can obtain matriculation or equivalent certificate, if available. In the absence of any matriculation or equivalent



certificate only, the Court is required to obtain date of birth certificate from the School first attended. Further, only when the matriculation certificate or equivalent certificate or date of birth certificate from School first attended is not available, the Court is required to obtain birth certificate issued by the Corporation or Municipal Authority or a Panchayat. If none of the above mentioned documents can be obtained, a medical opinion will be required to be sought for from a duly constituted Medical Board. In the present case, the petitioner raised a doubt on the certificate containing entry of date of birth of the Opposite party No.2 on the ground that ink was spread over the admission register maintained by the School. There being doubt over the certificate, the J.J. Board adopted a fair procedure by seeking opinion of the Medical Board for the purpose of age determination enquiry.

23. Reliance placed by the learned counsel for the petitioner in case of Om Prakash Vs. State of Rajasthan and another reported in (2012) 5 SCC 201 is of no avail. In that case the Supreme Court noticed the conduct of the appellant who had attempted to hide his real age so as to create doubt in the mind of the Courts. The Supreme Court on the value of medical evidence observed in paragraphs 35 and 36 as follows:-

"35. While considering the relevance and value of the medical evidence, the doctor's estimating of age although is not a sturdy substance for proof as



it is only an opinion, such opinion based on scientific medical tests like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused.

36. *In Ramdeo Chauhan V. State of Assam, the learned Judges have added an insight for determination of this issue when they recorded as follows: (SCC p. 720d-e)*

"Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where the court gropes in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. In the absence of all other acceptable materials, if such opinion points to a reasonable possibility regarding the range of his age it has certainly to be considered." (emphasis supplied)

The situation, however, would be different if the academic records are alleged to have been withheld deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the contesting parties."

24. The decision in case of **Sikander Mahto Vs. Tunna** and **State of M.P. Vs. Anoop Singh** (supra) have no applicability at all in the facts and circumstances of the present case where age determination is based on the opinion of a duly constituted Medical Board.

25. Let me now examine as to whether Supreme Court's decision in case of Darga Ram (supra) has been duly applied by the Board and the Court below for the purpose of age determination enquiry of opposite party No.2. In the case of Darga Ram in the absence of documentary evidence as contemplated under Rule 12(3)(b) of the J.J. Rules, 2007, a



Board of doctors for medical examination including Radiological examination of the appellant of that case was constituted to determine the appellant's age as on the date of the occurrence. On the date of examination, the appellant was found to be between 30 years to 36 years. The Supreme Court proceeded to determine the age of the appellant of that case by accepting upper extremity limit of 36 years subject to variation of plus minus two years, meaning thereby he could as well be 34 years on the date of examination. Taking that age on the date of examination, age of Darga Ram was arrived at 18 years, two months and 7 days as on the date of the occurrence. The Supreme Court, applying Rule 12(3) (b) of J.J. Rules, 2007, held him entitled to additional benefit of one year in terms of lowering his age, bringing him to 17 years and two months old as on the date of the occurrence and, therefore, a juvenile as on the date of occurrence. Relevant portion of paragraph 17 of the said decision is being extracted hereinbelow for the benefit of clarity:-

"17..... 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 could as well be 34 years on the date of the examination. Taking his age as 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 may 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."



26. Applying the principle, which was applied by the Supreme Court in case of Darga Ram (supra), the Juvenile Justice Board, taking upper extremity limit of 22 years of age as determined by the Medical Board as on the date of the examination allowed variation of plus minus two years. Accordingly, as on 21.01.2016, age of Opposite party No.2 has been taken by the Board to be 19 years as on the date of the examination by the Medical Board. Date of occurrence being 22.02.2015, his age on the date of occurrence based on the opinion of the Medical Board would have come to 18 years and one month. Applying Rule 12(3) (b) of the J.J. Rules, 2007, the Board allowed additional benefit of one year, bringing age of opposite party No.2 to 17 years and one month. As a matter of fact, the Board could not have allowed additional benefit of one year applying Rule 12(3) (b) of the J.J. Rules, 2007, rather, it ought to have applied Rule 11(3) (b) of the Bihar J.J. Rules, 2012 by giving additional benefit of six months in place of one year. That would have brought the age of opposite party No.2 to 17 years and seven months as on the date of occurrence.

27. Evidently, thus, the exercise done by the Juvenile Justice Board in age determination enquiry is in conformity with the Supreme Court's decision in case of Darga Ram (supra) and Rule 11(3) (b) of Bihar J.J. Rules,



2012 to the extent indicated above. Learned Sessions Judge has in such circumstance, rightly not interfered with the decision of the Juvenile Justice Board, declaring opposite party No.2 to be a juvenile.

28. In view of the above, I do not find any merit in this application. The impugned orders do not require interference by this Court.

29. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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