

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.877 of 2017

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

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Om Prakash Prasad @ Om Prakash Son of Late Vishwanath Prasad, Resident of Mohalla-Sahebganj, P.S. Chapra Town, District Saran.

.... Petitioner

Versus

1. The State of Bihar
2. Guddu Miyan @ Mohammad Guddu, Son of Sirajul Miya @ Sirajuddin Miyan, Resident of Mohalla-Shandha Dhala, P.S. Chapra Muffasil, District saran

.... Respondents

with

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Criminal Revision No. 968 of 2017

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

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Guddu Miya @ Guddu Mian Son of Serajuddin Mian @ Serajul Mian, R/o Village-Sandha Dhala, P.S.- Chapra Muffasil, District- Saran (Chapra).

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. REV. No.877 of 2017)

For the Petitioner/s : Ms. Surya Nilambari, Advocate

For the Respondent/s : Mr. Bindhyachal Singh with
Mr. Ram Binod Singh, Advocates

For the State : Mr. Harendra Prasad, APP

(In CR. REV. No.968 of 2017)

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Ram Naresh Ray, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 27-09-2018

Since both the revision applications arise out of Chapra Mufassil P.S.Case No. 188 of 2015 and in view of order dated 23.7.2018 passed in Cr.Revision No. 877 of 2017, both the cases were



directed to be heard together, as such both the applications have been taken up and heard together and are being disposed of by this common judgment.

2. So far **Cr. Revision No. 877 of 2017** is concerned, it has been filed by the petitioner Om Prakash Prasad @ Om Prakash, who is informant in Chapra Muffasil P.S.Case No. 188 of 2015, against the judgment dated 24.7.2017 passed in Cr. Juvenile Appeal No. 35 of 2017, affirming the order order dated 6.4.2017 passed by Juvenile Justice Board (hereinafter referred to as the 'Board), Chapra in J.J.B. No. 1531 of 2017, arising out of Chapra Mufassil P.S.Case No. 188 of 2015, registered under Section 302/34 of the Indian Penal Code, by which the accused opposite party No.2 has been declared juvenile.

3. So far **Cr.Revision No. 968 of 2017** is concerned, it has been filed by the accused petitioner Guddu Miya @ Guddu Mian against the judgment dated 19.8.2017 passed by Sri Ashok Kumar Gupta, 1st Additional Sessions Judge, Saran at Chapra in Cr. (Juvenile) Appeal No. 47 of 2017 by which he has dismissed the appeal preferred against the order dated 26.7.2017 passed by learned Principal Magistrate, Juvenile Justice Board, Saran at Chapra in J.J.B. Case No. 1531 of 2017 rejecting the prayer for bail of the petitioner.

4. Prosecution case, in short, is that the informant-petitioner has lodged a fardbeyan at Emergency Ward, Sadar Hospital, Chapra



alleging that there was love affair with his daughter Smriti Kumari, aged about 23 years, and opposite party No.2 for the last 3-4 months and on the fateful day, i.e., 10.8.2015, when she went to meet opposite party No.2 Guddu Miyan, at his behest, he refused to marry her and thereafter at his residence she was brutally assaulted by opposite party No.2 and his parents and they forced her to swallow acid but she somehow managed to flee and reached her house, where she disclosed the incident to her parents and when her condition was deteriorating she was brought to the Sadar Hospital, Chapra by her parents and from where she was referred to the Patna Medical College and Hospital, Patna for better treatment but on the way she breathed her last.

5. On the basis of the aforesaid fardbeyan, Chapra Muffasil P.S.Case No. 188 of 2015 was registered. The record further shows that opposite party No.2 has taken a plea of juvenile and as such an enquiry was conducted and in that enquiry School Admission Register of opposite party No.2 was produced and a teacher of the said school, has proved the same and in the said Register date of birth of opposite party No.2 has been mentioned as 6.11.1999. Before the Juvenile Justice Board an application was filed by the petitioner that the School Admission Register filed by opposite party No.2 is not a valid piece of document and genuine document in order to ascertain his age and as



such prayed for his age determination by conducting Ossification Test.

6. Learned Juvenile Justice Board vide order dated 6.4.2017 passed in J.J.B. No. 1531 of 2017 has declared opposite party No.2 Guddu Miya as juvenile and assessed his age as 15 years 9 months and 4 days.

7. Being aggrieved by the aforesaid order of Board the informant-petitioner has preferred Cr.(Juvenile) Appeal No. 35 of 2017, which was ultimately traveled to the file of Sri Ashok Kumar Gupta, 1st Additional Sessions Judge, Saran, Chapra, who after hearing the parties did not find any illegality while affirming the order of the Board and dismissed the appeal filed by the petitioner.

8. Hence, the present revision application has been filed before this Court against the judgment of appellate court as well as the order of the Board on the ground that the Board while assessing the age of accused opposite party No.2 did not follow the guidelines contained in Section 94(2) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as '2015 Act') and further relied upon first the School Admission Register which is of no sanctity in the eye of law and credibility of such document is itself doubtful and further on the ground that no document has been produced by accused opposite party No.2 which is permissible under



the 2015 Act to substantiate his claim, as such the Board could have conducted the Ossification test for ascertaining his age and further on the ground that the author of the School Admission Register has not been examined nor the person on whose information the same was entered into the Register nor the person normally in whose custody the Register was kept has been examined, which are requirement of Section 35 of the Evidence Act and as such the finding of JJB that accused opposite party No.2 is juvenile is illegal and not sustainable in the eye of law.

9. Further submission of learned counsel for the petitioner is that voters identity card was produced which shows the age of the accused opposite party No.2 as 21 years on 10.1.2017 and as such he was above 18 years of age and in that background learned Board ought to have conducted the Ossification test for determining the age of accused opposite party No.2.

10. On the other hand, submission of learned counsel for opposite party No.2 is that Section 94(2) itself provides that first of all a court shall look into the school certificate or call for Corporation certificate or Municipal authority certificate and in this case School Admission Register was produced and the same has been proved by a teacher of the school and for determination of age a court cannot adopt hyper approach and for that no roving enquiry was required



and being satisfied with the same the opposite party No.2 has been declared as juvenile, moreover the voters identity card is not a document mentioned either in Rule 12 of Juvenile Justice Rules, 2007 or Section 94(2) of 2015 Act. It has also been argued that Ossification Test can only be made if school certificate or Matriculation certificate Corporation or Municipal authority certificate is not available and as such there is no illegality in the order passed by the Juvenile Justice Board declaring him as juvenile and accordingly the appellate court as affirmed the order of the Juvenile Justice Board and the same does not require any interference by this Court.

11. So far provision regarding determination of age is concerned, Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as '2000 Act') provides the procedure to be followed when claim of juvenility is raised before any court and further Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to '2007 Rules') provides for procedure to be followed in determination of age and Rule 12(3) of 2007 Rules provides as follows :

“ 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 certificate, 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,”

12. Section 94(1)- Where it is obvious to the Committee or the
Board, based on appearance of the person brought before it under any
of the provisions of this Act (other than for the purpose of giving
evidence) that the said person is a child, the Committee or the Board
which recorded such observation stating the age of the child as nearly
as may be and proceed with the inquiry under Section 14 or Section
36 as the case may be, without waiting for further confirmation of the
age, (2) in case the Committee or the Board has reasonable grounds



for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, which undertakes the process of age determination, by calling evidence by obtaining-

(i) the date of birth certificate from the school or Matriculation Examination or call for the certificate from the concerned examination Board, if any, and in absence thereof;

(ii) the birth certificate given by a Corporation or Municipal Authority or a Panchayat;

(iii) and only in absence of one and from the above, the age shall be determined by Ossification Test or any other latest medical age determination test conducted on the orders of the Committee or the Board

Provided such a determination test conducted on the order of the Committee or the Board shall be completed within 15 days from the date of such order

(3) the age recorded by the Committee or the Board to be aged of the person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Provisions of Section 7A of 2000 Act and Rule 12 of Juvenile Justice Rules 2007 are almost similar to the provisions contained in Section 94 of 2015 Act. In the present case, occurrence took place on



10.8.2015, whereas 2015 Act came into force with effect from 1st January, 2016. However, an enquiry was conducted in the year 2017 as such a question arises as to whether it will be governed by 2000 Act and Rule 12 of 2007 Rules or by the provisions of 2015 Act. Since the provisions are almost similar, it will not make any difference so far merit of the case is concerned. Section 94(2) provides that a Committee or Board as the case may be shall undertake a process of age determination evidence for calling evidence obtaining (i) date of birth certificate from the School or Matriculation certificate or call for certificate from the concerned examination Board, if any, and in absence thereof birth certificate given by the Corporation or Municipal Authority or Panchayat and only in absence of aforesaid two documents the age shall be determined by Ossification Test on the orders of the Committee or the Board.

13. On close scrutiny of the provisions of Section 7A of 2000 Act, Rule 12 of 2007 Rules as well as Section 94 of 2015 Act it appears that the provision for procedure to determine the age and the guidelines for that is similar in 2000 Act and 2007 Rules or under 2015 Act. In the present case though the occurrence took place on 10.8.2015 but the enquiry was conducted in the year 2017 whereas 2015 Act came into force from 1.1.2016, so the question arises as to



whether it will be governed by 2000 Act, 2007 Rules or 2015 Act. However, since the provision is almost similar it will not make any difference so far procedure for enquiry is concerned and both Rule 12 of 2007 Rules and Section 94(2) of 2015 Act provide for obtaining date of birth certificate from the school first attended or matriculation certificate or from the certificate of examination board and in absence of both birth certificate is given by corporation or municipal authority or panchayat and only in absence of the aforesaid two documents, as stated above, it provides for determination of age by Ossification Test on the orders of the Committee or the Board.

14. So far submission of learned counsel for the petitioner that author of the school admission register nor the basis of the entry in admission register nor information on which the entry was made has been brought on the record and as such determination of age by the Board suffers from illegality and impropriety, it is settled legal position that an offender was a juvenile or not on the date of commission of offence is essentially a question of fact and that can be determined as per the provisions contained in Section 94 of 2015 Act or Rule 12 of 2007 Rules. The Hon'ble Apex Court in the case of **Jyoti Prakash Rai vs. State of Bihar : (2008) 15 SCC 223** held that Juvenile Justice Act, 2000 is indisputably a beneficial legislation, but, however the principles of beneficial legislation are to be applied only



for the purpose of interpretation of the Statute and not for arriving at a conclusion as to whether a person is Juvenile or not and held as follows :

“The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on records by the parties. In absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Indian Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.”

Further Hon'ble Apex Court in the case of **Ravinder Singh Gorkhi vs. State of U.P. : (2006) 5 SCC 584** has held as follows :

“Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It



will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case.”

And it has further been held as follows :

“The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.”



15. However, this Court is of the opinion that at the same time, a mere decision as to the age of the offender at the time of the offence, of either being less or more than 18 years, can seal the fate of a person, the courts are therefore expected to decide the issue with utmost care and sensitivity, involving meticulous deliberation and diligence. The courts must carefully scrutinize the documentary evidence in support of the offender's claim of juvenility, placed on record by him. The court is not to act as a mute spectator to blindly trust the matriculation or school certificates produced by the offender but must make every endeavour to ascertain the genuineness of such documents by directing the offender to lead evidence in support of it. Such degree of care and caution to be exercised by the courts may vary from case to case, not to dwell so as to threadbare examine every document but also not to let the offender take a blanket protection under the said Act.

16. In the present case, accused opposite party No.2 has been declared juvenile on the basis of the School Admission Register and the School Admission Register discloses that on 30.9.2007 the opposite party No.2 has admitted into the school in Class-I and his date of birth has been mentioned as 6.11.1999 but column of the father's signature and parents signature is blank. Moreover, the School Admission Register has been proved by a teacher of the said



school, Sri Sunil Kumar but no person has been examined to prove as to who has made the entries in the register and there is absolutely nothing on record to show what is the basis of entry regarding his date of birth as to whether it has been entered into on the basis of admission form or on the information supplied by his father or parents and without considering the above facts, accused opposite party No.2 has been declared juvenile and as such, to my opinion, the finding arrived at on enquiry suffers from patent illegality and impropriety.

17. Considering the above, to my opinion, the matter requires reconsideration.

18. Accordingly, Cr. Revision No. 877 of 2017 is allowed. The impugned judgments of both the courts below are set aside. The matter is remitted back for enquiry for determination of age of opposite party No.2 as per the provisions contained in 2015 Act or under 2007 Rules after a detailed enquiry and the informant be given a chance to participate in that enquiry to determine the age of opposite party No.2. However, only in the case of absence or failure to produce the documents relating to first two clauses of the provisions, i.e., certificate of age granted by school or Matriculation certificate or certificate of Corporation or Municipal Authority, Ossification Test can be held by a Medical Board. It is also directed that the enquiry must be completed within 30 days.



19. So far Cr.Revision No. 968 of 2017 is concerned, in which petitioner is the accused who is opposite party No.2 in Cr.Revision No. 877 of 2017, submission of learned counsel for the accused petitioner is that the petitioner is in custody since 14.12.2015 and he has been declared juvenile and found his age about 15 years 9 months 4 days at the time of occurrence and at best he can be convicted and sentenced for three years, out of which he has already remained in custody for almost two years nine months. Further submission is that the Social Investigation Report is also not clear and finding of both JJB and appellate court that he is not of good character and his companion is also not good and if he is released he will be exposed to the physical, moral and psychological danger is without any report and based on surmises and conjectures.

20. On the other hand, learned counsel for the informant has submitted that the order of J.J.B. is just and proper rejecting the prayer for bail as there is allegation against him of administering acid to the daughter of the informant, who was pregnant and due to that she died and moreover Social Investigation Report is also not in favour and as such he does not deserve bail.

21. No doubt, the petitioner accused Guddu Miya is found to be juvenile and found to be aged 15 years 9 months and he has remained in custody for about 2 years 9 months but considering the discussions



made above and as the finding of JJB and appellate court regarding determination of juvenility has been set aside, I am not inclined to grant bail to the petitioner Guddu Miya at this stage. However, once the enquiry is concluded and petitioner is found to be juvenile, he may move before the JJB for bail, who shall consider the same on the basis of the material available on record and as well as the fact that he has remained in custody for about 2 years 9 months and dispose of the prayer for bail.

22. In the result, Cr.Revision No. 877 of 2017 is allowed and impugned judgment of appellate court and order of JJB are set aside and matter is remitted back to the learned JJB for considering afresh as per direction as made above. So far Cr.Revision No. 968 of 2017 is concerned, the same is dismissed with above observation.

(Vinod Kumar Sinha, J)

spa/-

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