

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE T.RAJANI**

Crl.A.M.P.No.560 of 2017

IN/AND

CRIMINAL APPEAL No.265 of 2016

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

Accused No.5 (Jolam Aravind) in S.C.No.456 of 2012 on the file of IX Additional Sessions Judge, Ranga Reddy District, is the appellant herein. He along with others tried for the offences punishable under Section 302 read with 34 IPC and Section 227 (1) of Arms Act. By its judgment dated 08.03.2016, the learned IX Additional Sessions Judge, Ranga Reddy District, found the appellant along with others guilty for the offence punishable under Section 302 read with Section 34 IPC and sentenced the appellant along with others to suffer imprisonment for life and also pay a fine of Rs.1,000/- in default to suffer imprisonment for six months. Challenging the said conviction, the present appeal came to be filed.

2) Pending the said appeal, the appellant herein filed Crl.A.M.P.No.560 of 2017, under Rule 12 (3)(b) of Juvenile Justice (care and protection of children) Rules, 2007 (for short, 'the Rules of 2007') requesting Osmania Government Hospital to constitute a Board of Directors for medical examination of the appellant, to determine his age as on the date of commission of the offence i.e., on 27.02.2012.

3) As seen from the record, the incident occurred on 27.02.2012. It is the case of the appellant-A5 that he was minor as on the date of the offence and that his age would be only 17 years 3 months and 29 days as on the date of the offence. Placing reliance on the certificate issued by the Municipal Corporation of Hyderabad, showing his date of birth as 29.10.1994, the appellant seeks to set aside his conviction and sentence imposed by the trial Court.

4) On 18.04.2017, this Court directed IX Additional Sessions Judge, Ranga Reddy District, L.B.Nagar, to conduct an enquiry and submit a report by the next date of hearing. No report of the IX Additional Sessions Judge is found on record. However, the Assistant Professor, Department of Forensic Medicine, Osmania Medical College/ Osmania General Hospital, Hyderabad, submitted his report, which was found to be unsatisfactory, as he determined the age of the accused with a margin of four years (21 to 25 years). Hence, this Court directed the age of the accused to be determined more precisely with the use of forensic tools and called for a fresh report. Thereafter, the proceedings of the Regional Medical Board, Osmania General Hospital, Hyderabad, comprising of three members was placed on record, wherein the members determined the age of the accused as 21 years as on 15.07.2017. As the said proceedings do not indicate use of any forensic tools and merely states that the members of the Board have carefully examined the accused, this Court directed the Osmania General Hospital to furnish a fresh

certificate indicating the age of the accused within a span of 1-2 years, by subjecting the teeth and bones to the forensic examination, if required. Subsequently, the Department of Forensic Medicine, Osmania General Hospital, submitted its report to the Superintendent, Osmania General Hospital, Hyderabad, stating that after the age of 21 years, the range becomes wider and will be in the range of five years upto 35 years and thereafter it will be in the range of ten years with advancing range. It is further stated that they are not aware of any advanced tests which the specialties of Radio-Diagnosis or Anatomy Specialists have at their disposal. It is further stated that by using dental examination, age can be established with certainty, with a range of one year, upto 20 years only. The Ossification test conducted is useful upto 21 years of age as fusion of most of the Epiphyses happens by this age. Thereafter, the age can be given with degenerative changes of bones as well as fusion of few other Ossification centers with a wide range. In the last para of the said certificate, it is stated that what has been communicated to the Superintendent is only their opinion and Medical Board is free to opine in this matter. The same came to be placed before the Court by the learned public prosecutor, which was forwarded to him by the Professor, Head of the Forensic Medicine, Osmania Medical College, Koti, Hyderabad.

5) The question now is: "Whether the appellant is a juvenile as on the date of commission of the offence?"

6) As seen from the record, the report of the Regional Medical Board shows that the age of the appellant was 21 years as on 15.07.2017. If the said report is accepted, the age of the appellant as on the date of commission of offence i.e., 27.02.2012 would be 16years, 4 months and 139 days.

7) Learned counsel for the petitioner would submit that even if a range of five years as stated in the report is accepted, still the petitioner would be less than 18 years as on the date of commission of the offence. He would further contend that the case of the petitioner stands on the same footing as that of A4, who was extended the benefit.

8) Rule 12 of the Rules of 2007 prescribe the procedure to be followed in determining the age. Rule 12(3) states as under:

(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.

9) In *Abuzar Hossai alias Gulam Hussain Vs. State of West Bengal*¹, the Court summarized the position with regard to claim of the juvenile and observed as under:

- 1.A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial Court and can be raised for the first time before this Court though not pressed before the trial Court and in the appeal Court.
- 2.For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the Court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.
- 3.As to what material would prima facie satisfy the Court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the Court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast Rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh* MANU/SC/0746/20089 ; (2009) 7 SCC 415 and *Pawan* MANU/SC/0289/2009;(2009) 15 SCC 259 these documents were not found prima facie credible while in *Jitendra Sing*

¹ {(2012)10 SCC 489}

MANU/SC/0962/2010 ; (2010) 13 SCC 523 the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the Appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised.

10) In the instant case, the petitioner relies upon the copy of the birth certificate issued by GHMC, Hyderabad in the month of December, 2016, wherein the date of birth of the appellant was

shown as 29.10.1994. However, he did not place on record the school certificates to show his date of birth.

11) Having regard to the above, this Court called for medical reports by referring the appellant to the Board. As stated earlier, a certificate was submitted by the Assistant Professor, Department of Forensic Medicine, Osmania Medical College/Osmania General Hospital, determining the age of the accused as 21 years. Thereafter, when the Osmania General Hospital was directed to furnish certificate, a letter dated 30.10.2017 is placed on record to show that when once person crosses the age of 21 years, the range becomes wider and would be in the range of 5 years upto 35 years and that the age cannot be decided with a precision. It is urged by the counsel for the appellant that even if 5 years range is given, still the appellant would be less than 18 years as on the date of commission of the offence. As seen from the record, the certificate issued by the Greater Hyderabad Municipal Corporation and the certificate of the Regional Medical Board show that the petitioner would be less than 18 years as on the date of commission of the offence. When the Court wanted the exact determination of the age by conducting Ossification test, the report came to be submitted stating that the range would be about 4 years and that determination of the age in the range of one year as sought for by the Court, cannot be given. Since the medical reports are in conflict with each other and exact age of the accused as on the date of commission of

offence, could not be determined, the Principal District Judge was once again directed to conduct an enquiry by giving an opportunity to all concerned, determine the age of the accused as on the date of commission of the offence and submit his report.

12) In a catena of cases, the Apex Court *set aside* the convictions recorded and sentences imposed upon the juveniles after obtaining opinions from competent authority in cases where documentary evidences are not available. In the case on hand there is sufficient documentary evidence to show that the appellant was a juvenile as on the date of the alleged offence. As per the documents filed by the appellant, the date of birth of the appellant is 29.10.1994. The date of the commission of the alleged offence is 27.02.2012. The report submitted by the Principal District Judge, Ranga Reddy District, after conducting an enquiry by giving opportunity to all concerned, shows that the accused Jolam Arvind was aged about 21 to 25 years as on the date of his examination. If that is so, the contention of the appellant that he was a minor as on the datae of incident appears to be true.

13) The Law permits a person to claim that he is a child and that such claim can be raised at any stage and even before the Court of appeal. It is undeniable that when a person alleged to have committed an offence claims before a Court other than a Board, that the said person is a child on the date of the commission of the

alleged offence and if the said claim is found to be true on such enquiry, as may be necessary in regard to determination of the age of such person, such Court shall forward the child to the Board concerned for passing appropriate orders and sentence in accordance with law applicable to the case of such child.

14) That being the legal position, given the facts coupled with the documents produced by the appellant, we find that the appellant is a minor or child as on the date of the commission of the alleged offence.

15) In view of the said finding we hold that the conviction and the sentence imposed against the appellant, by the learned IX Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in S.C.No.456 of 2012, have no effect in the eye of law.

16) Accordingly, the Crl.A.M.P. is disposed of. Consequently, the Criminal Appeal is allowed, setting aside the conviction recorded and the sentence imposed against the appellant, Jolam Aravind (A-5) in S.C.No.456 of 2012 for the offence punishable under section 302 read with 34 IPC. The fine amount, if paid already shall be refunded. As a sequel to the above findings, we direct the State to take appropriate steps for production of the appellant forthwith before the Board constituted for Ranga Reddy District, under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against the appellant/accused in accordance with law and passing

appropriate orders after due enquiry as per law applicable to the case against him.

Miscellaneous Petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T. RAJANI

Dt:04.07.2018
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