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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 14.01.2019

+ CRL. REV. P. 1143/2018

SURAJ

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Mayank M. Mukherjee, Adv. (DHCLSC)

For the Respondent : Mr. Hirein Sharma, Addl. PP for the State with SI
Durgadas

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

Crl. M.A. 49858/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL. REV. P. 1143/2018 & Crl. M.A. 49859-60/2018

1. Petitioner impugns order dated 06.06.2018 whereby charges have been framed against the petitioner. Petitioner also impugns order dated 17.11.2016 whereby the claim of the juvenility of the petitioner was rejected by the trial court.

2. Learned counsel for the petitioner contends that the trial court

had erred in framing a charge and treating the petitioner as a major and has further erred in relying on the medical opinion of the doctor declaring the petitioner to be aged about 19 years.

3. Learned counsel submits that the doctor had relied on *Modi's Medical Jurisprudence* which has opined that the age, following the tests which were conducted, would be between 14 to 20 years.

4. Learned counsel for petitioner submits that it is for the prosecution to establish that the inescapable conclusion was that the petitioner was a major and not vice-versa.

5. Reliance was placed by learned counsel for the petitioner on the judgment of the Supreme Court in '*Veer Pal Singh Vs. Secretary, Ministry of Defence*' (2013) 8 SCC 83, wherein the Supreme Court has held as under:

“10. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

6. Learned Addl. PP appearing for the State submits that all

contemporary documents show the date of birth of the petitioner as 05.08.1995 and the incident is of 28.05.2014 which places the age of the petitioner at 18 years and 9 months and the Medical Board also ascertained the age of the petitioner as between 18 years and 11 months and 19 years and 11 months and as such the inescapable conclusion is that the petitioner was major on the date of the commission of offence.

7. Learned Addl. PP submits that the age of the petitioner was determined by order dated 17.11.2016 and the petitioner having failed to challenge the order dated 17.11.2016 is precluded from indirectly impugning the same by impugning the charge framed vide order dated 06.06.2018.

8. As notice above, the incident took place on 22.06.2015 and claim of the juvenility was raised by the petitioner. On 30.05.2015, the trial court after conducting the inquiry to ascertain the age of the petitioner was of the view that the contemporary documents that were produced mentioned the date of birth of the petitioner as 05.08.1995. However, relying on the provision of Section 7 and Rule 12 of the Juvenile Justice Act, the trial court was of the view that none of the documents which were produced in inquiry were the ones stipulated as per the rules and accordingly the matter was referred to the Medical Board for rendering its opinion.

9. After conducting appropriate tests, medical board has returned

the finding that the petitioner was between 18 years and 11 months and 19 years and 11 months on the date of commission of the offence.

10. Accordingly, the trial court by order dated 17.11.2016 returned a finding that petitioner, on the date of commission of the offence was a major. Said order was not challenged by the petitioner. Subsequently, the proceedings continued and culminated in an order dated 06.06.2018 framing charge against the petitioner for the offence under Section 302/34 IPC and Section 201/34 IPC. It is at this stage that the petitioner has sought to challenge the order rejecting his claim of juvenility.

11. Perusal of order dated 30.05.2015 shows that all the documents that have been produced during inquiry show the date of birth of the petitioner as 05.08.1995 which leads to an inference that when the offence was commissioned, the petitioner was aged 18 years and 9 months. Since the documents stipulated by the rules were not available, the trial court referred the matter to the Medical Board which rendered an opinion that the petitioner on the date of commission of offence was aged 18 years and 11 months and 19 years and 11 months. The opinion of the Medical Board corroborates the documents produced by the Investigating Officer during the inquiry. No doubt that the documents which were examined during the inquiry, are not the documents which are stipulated under the rules, however, the documents corroborate the Medical Board's opinion that

on the date of commission of offence the petitioner was more than 18 years of age.

12. Reliance placed by the counsel for the petitioner on the Judgment in *Veer Pal Singh (supra)*, is misplaced as the judgment is not applicable to the facts of the present case.

13. In the present case, all evidence collected during inquiry and also the opinion Medical Board places the age of the petitioner at 18 years and 11 months and 19 years and 11 months.

14. Trial court in the order dated 17.11.2016 has *inter alia* held as under:

“.....The medical report has been given by medical board comprising professors of physiology, Radiodiagnosis, forensic medicine and dental wing from the Safdarjung Hospital. There is no justification coming upon record to discard the report of the Board. There may be different studies on a particular aspect. The results may also vary. However, the study followed by the medical experts has to be taken into consideration.

The opinion of the medical hoard is also duly corroborated by all the documents produced by CW1 and CW2 from two different schools pertaining to the age of the accused. Though the said documents were not found to be fit for consideration as per the scheme, however, all the documents were consistently showing the date of birth of accused as 05.08.1995, which shows that his age at the time of commission of offence was 18 years and 9 months thus fully corroborating the medical opinion which also shows that his age on the date of commission

of offence was between 18 years 11 months to 19 years 11 months. The counsel for the accused has cross-examined both the witnesses CW-1 and CW-2 however the authenticity of the said documents were never challenged by the counsel for the accused

The date of birth mentioned in the said certificates was never questioned. It is never the plea of the accused that the date of birth mentioned in the said documents was wrong.

Though all the above-said documents produced were consistently showing the date of birth of accused as 05.08.1995 thereby making his age at the time of commission of offence as 18 years and 9 months, however as per the procedure laid down in Section 7A and Rule 12 of Juvenile Justice Act; the scope of which has been vividly expressed in a number of judgments none of the above-said documents could be taken into consideration for the purpose of determining the age of accused Suraj. However, it has also come on record that all the said documents were produced on record by independent witnesses which were summoned by the court.

While cross-examining CW-2 counsel for the accused has asked the witness as to whether the witness was aware of the previous school in which the accused was studying in class V. The accused however himself has neither provided any details of the school first attended by him nor any document from the school first attended has been produced which could be an intentional omission.

A verification report produced by the IO from the concerned schools dated 02.05.2015 also shows that his date of birth was 05.08.1995 which meant that he was a major on the date of incident. Though the scheme of the Act has clearly provided for a sequence and the certificates which can be considered for the age determination enquiry. However, in my considered view the above-said documents does inspire confidence of this Court so as to prima facie consider them in corroboration to the medical opinion given by a duly constituted medical board. The said documents prima facie can be taken into consideration at least for the purpose of corroborating the medical opinion.

In view of the aforesaid, hence what assures this Court about the estimate of age is the fact that the same is determined by a medical board comprising professors of physiology, Radiodiagnosis, forensic medicine and dental wing from the Safdarjung Hospital, which opinion must get the respect it deserves more specifically when also corroborated by other documents which have come up on record. The reliance placed by the counsel for the accused on a specific school of medical jurisprudence is of no help to the applicant. There is no justification coming up on record to discard the study which has been relied upon by the Medical Board while giving its opinion.

As per the Medical Board opinion, the age of accused Suraj was between 20-21 years on the day of his examination i.e. 22.06.2015. The date of incident in the present case was 28.05.2014. After deducting the period between the date of offence and date of examination of accused Suraj by the Medical Board, the age of accused Suraj comes to around 18 years 11 months. The said opinion is also corroborated by four different documents produced on record by independent witnesses

consistently showing his date of birth to be 05.08.1995 which meant that he was 18 years 9 months on the date of incident.

In view of the aforesaid, I do not find any justification to discard the report filed by the Board. Hence, under the eventuality the accused is not entitled to the benefit. His plea hence is discarded.”

15. The trial court has very categorically considered the documents and also the medical opinion and returned a finding that the petitioner was a major on the date of commission of the offence and I find no infirmity in view taken by the trial court and accordingly I find no merit in the petition. The petition is accordingly dismissed.

16. Order *Dasti* under signatures of the Court Master.

JANUARY 14, 2019
‘rs’

SANJEEV SACHDEVA, J