

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

Date of decision: 03.02.2020

IN THE MATTER OF:

+ **CRL.REV.P. 628/2018**

STATE

..... Petitioner

Through: Dr. M.P. Singh, APP for State with
SI Shakti Raj, P.S Karawal Nagar

Versus

TEJVEER @ GUDDU & ORS.

..... Respondents

Through: Mr. Pramod Kumar and Mr. Baljeet
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

1. The present petition is directed against the order dated 25.04.2018 passed by the Addl. Sessions Judge in SC No.368/2017 arising out of FIR No.133/2016 registered under Sections 363/368/120-B/506/34 IPC & Section 17 of POCSO Act at P.S. Karawal Nagar, thereby discharging the respondents under Section 17 of POCSO Act.

2. Learned APP for the State submitted that the trial court has committed an illegality by placing reliance on the bone ossification test report, which indicated the age of the victim to be 16-18 years and by holding that the victim was a major and provisions of POCSO Act not being applicable, transferred the case to Distt. & Sessions Judge to assign the present case to the court of competent jurisdiction. It is contended

that reliance on the bone ossification test report was misplaced as the prosecution had placed on record victim's school certificate dated 29.04.2016 wherein the victim's date of birth was recorded as 22.08.2004, as per which the victim was a minor on the date of the incident.

3. Per contra, learned counsel for the respondent has supported the impugned order and submitted that the trial court has rightly granted the benefit of two years in determining the age of the victim.

4. I have heard learned counsels for the parties and gone through the case records.

5. On 25.03.2016, the FIR came to be registered on a missing report lodged by the victim's mother wherein it was stated that the victim, who was aged about 14 years, was missing for the last 20 days and a suspicion was raised on the co-accused, a JCL (son of the present respondent).

6. During investigation, the victim was traced and it was found that the respondent got his son, a JCL, married to the victim, who was living with them as his daughter-in-law in their village. A charge-sheet was filed against respondent No.1, his wife (respondent No.2) and one Satender (respondent No.3) under Sections 363/368/120B/506/34 IPC and Section 17 of POCSO Act. A separate report was filed against the JCL before the J.J.B., Mukherjee Nagar, Delhi. In the present case, along with the charge-sheet, a certificate of the school attended by the victim was also placed on record. As per the school certificate, the victim was less than 12 years of age. During investigation, the Investigating Officer also got the ossification test of the victim conducted and enclosed the report with the charge-sheet.

7. The short question to be decided in the present case is as to whether an ossification test report can be relied upon when a school certificate certifying the age of the victim is already on record.

8. Recently, this Court in *Suraj Puri v. State*, passed in Crl. M.C. 5989/2019 decided on 24.12.2019, while relying on the decision of the Supreme Court in *Jarnail Singh*¹, held that the procedure to determine the age of a 'juvenile in conflict with law' in terms of Rule 12 of Juvenile Justice (Care and Protection of Children), Rules 2007 is also applicable for determination of age of the child victim. Hence, the expression 'whether a person is a child or not' in Section 34 (2) of the POCSO Act would also include a 'child victim'.

9. I also deem it profitable to refer to Section 94 of the Juvenile Justice (Care And Protection Of Children) Act, 2015, which came into force on 15.01.2016 and is reproduced below :-

94. ... (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, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

¹ *Jarnail Singh v. State of Haryana* reported as (2013) 7 SCC 263

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board....”

10. In terms of the above rule, ossification test report is to be relied upon only if the first two options given under sub-section (i) and sub-section (ii) are not available in the present case. The prosecution has placed on record a school certificate of the child victim issued by MCD Pratibha School, Shahdara. The principal of the concerned school was also cited as a witness to prove the age of the victim.

11. In an ‘Age Determination Inquiry’, a medical opinion by an ossification test, is to be relied on only and only if the date of birth certificate from school/matriculation or equivalent certificate from the concerned examination board and birth certificate by corporation/municipal authority/panchayat, are not available (Refer: State of M.P. v. Anoop Singh², Mahadeo S/o Kerba Maske v. State of Maharashtra³, Ashwani Kumar Saxena v. State of M.P.⁴ and Parag Bhati v. State of UP⁵).

12. In view of the settled legal position and the fact that no doubt has been raised about the authenticity and reliability of the aforesaid school certificate, the impugned order passed by Addl. Sessions Judge being illegal is set aside. The revision petition is allowed.

² State of M.P. v. Anoop Singh reported as (2015) 7 SCC 773

³ Mahadeo S/o Kerba Maske v. State of Maharashtra reported as (2013) 14 SCC 637

⁴ Ashwani Kumar Saxena v. State of M.P. reported as (2012) 9 SCC 750

⁵ Parag Bhati v. State of UP reported as (2016) 12 SCC 744

13. A copy of this order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 03, 2020

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