

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 186 of 2021**

Sanjay @ Sanju Verma, S/o Shri Pitamber Verma,
Aged about 23 years, R/o Village Arjuni, Police
Station Bhatapara Gramin, Distt. Balodabazar-
Bhatapara, Chhattisgarh.

---Petitioner/Accused

Versus

State of Chhattisgarh, Through the Station House
Officer, Police Station Simga, Distt.
Balodabazar-Bhatapara, Chhattisgarh.

--- Respondent

For Petitioner	:- Mr. Govind Ram Miri, Advocate
For State	:- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

03/03/2021

1. Petitioner's application for medical examination of the victim to determine her age has been rejected by learned Special Judge (Atrocities), Balodabazar-Bhatapara by impugned order dated 24/11/2020 (Annexure P/1) against which the instant petition has been preferred.
2. Mr. Govind Ram Miri, learned counsel for the petitioner, would submit that learned Special Judge is absolutely unjustified in rejecting petitioner's application for ossification test

of the victim by passing a non-reasoned and non-speaking order and without assigning any reason, his application has simply been rejected by learned Special Judge, as such, the impugned order deserves to be set aside.

3. Mr. Ravi Bhagat, learned State counsel, would support the impugned order and he would rely upon the decision of the Supreme Court in the matter of State of Madhya Pradesh v. Anoop Singh¹.

4. I have heard learned counsel for the parties, considered their submissions made herein-above and went through the records with utmost circumspection.

5. Petitioner herein has been charge-sheeted for offences punishable under Sections 363, 366 and 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012. In the particulars of crime, victim's age has been mentioned as 17 years whereas in the copy of her school admission certificate, it has been mentioned as 24/12/2004, as such, petitioner filed an application for conducting ossification test of the victim which has been rejected by

¹ (2015) 7 SCC 773

learned Special Judge by the impugned order which is not a reasoned and speaking order. It could have been passed by clearly stating the grounds on which petitioner's application has been rejected and no specific reason has been assigned by learned Special Judge in the impugned order, but the fact remains that in one of the certificates, victim's date of birth has clearly been mentioned as 24/12/2004.

6. In the matter of Anoop Singh (supra), Their Lordships of the Supreme Court have relied on its earlier judgment of Mahadeo S/o Kerba Maske v. State of Maharashtra² and held that ossification test is not sole criterion for determination of date of birth, when birth certificate and middle school certificate are available as under :-

"14. This Court in Mahadeo v. State of Maharashtra has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under :

"12.(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 of 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.

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 the conclusive proof of the age as regards such child or the juvenile in conflict with law."

15. This Court further held in para 12 of Mahadeo as under :(SCC p. 641)

"12..... Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.

(emphasis supplied).

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In para 13, this Court observed: (Mahadeo case, SCC p. 641)

"13. In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the school under Ext. 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any grounds to interfere with the same."

16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents."

7. Thus, in view of the aforesaid decision of the Supreme Court in the matter of Anoop Singh (supra) relying upon their decision in Mahadeo (supra), ossification test to determine the age

of the victim can be only be used as a last resort. In the instant case, a copy of victim's School admission certificate is available in which her date of birth has been mentioned as 24/12/2004, as such, there is no need for conducting an ossification test to determine the age of the victim and I do not find any case for setting aside the impugned order at this stage. However, this issue as to the age of victim is kept open and shall be decided during the course of trial by the Special Judge.

8. The instant petition deserves to be and is accordingly dismissed. No cost(s).

9. A copy of this order be sent to the concerned Special Judge for information and needful.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet