

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.284 of 2022**

Arising Out of PS. Case No.-139 Year-2020 Thana- GOPALGANJ TOWN District-
Gopalganj

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Abhay Kumar Singh, Son of Late Gautam Singh, R/o- Ward No.- 7,
Kaithvaliya, P.S.- Gopalganj Town, District - Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar
2. Chulbul @ Arbaj @ Arbaj Alam, Son Late Chand Miyan, R/o- Marwari
Mohalla, Ward No.- 16, P.S.- Gopalganj Town, District - Gopalganj.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Rajesh Roy, Advocate
For the State	:	Mr. Yogendra Kumar, APP
For the O.P. No. 2	:	Mr. Gaurav Prakash, Advocate
		Mr. Arvind Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT**

Date : 19-12-2023

This revision application has been preferred for setting aside the order dated 03.08.2021 passed by learned Additional District and Sessions Judge-I, Gopalganj in Cr. Appeal No. 20 of 2021. By the impugned judgment, learned Appellate Court has been pleased to set aside the order dated 14.06.2021 passed by learned Juvenile Justice Board, Gopalganj (hereinafter referred to as the 'Board') in J.J.B. Case No. 10 of 2021 arising out of Gopalganj P.S. Case No. 139 of 2020 registered for the offences under Section 302/34 of the Indian Penal Code by which the Board had declared the Accused No. 1-O.P. No.2 an adult on the basis of

assessment of age by the Medical Board headed by the Civil Surgeon, Saran at Chapra.

Brief Facts of the Case.

2. The opposite party no. 2 in the present application is an accused in Gopalganj P.S. Case No. 139 of 2020 registered under Section 302/34 IPC. According to the informant-petitioner, opposite party no. 2 had attacked the son of the informant by a knife when the victim was on his way back home from an invitation near Sati Sthan, Kothwaliya Ward No. 7. The victim was taken to the Gopalganj Sadar Hospital for treatment but when the informant was returning back along with his son to purchase medicines, this opposite party no. 2 along with three and four unknown people attacked his son again with knife with an intention to murder him. In the said occurrence, son of the informant was killed.

3. The opposite party no. 2 preferred an application under the provision of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015') and claimed that on the alleged date of occurrence, he was a juvenile. The opposite party no. 2 presented a date of birth certificate showing him a minor on the date of occurrence but the Board could not determine as to from which school the O.P. No. 2

had completed his education. By the order of the Board, a Medical Board was constituted to determine the age of the O.P. No. 2. It is stated that the Medical Board in its first meeting observed physical attributes of the O.P. No. 2 and advised him to go for an X-ray. In its second meeting held on 30.04.2021, the Medical Board acting on the basis of medical reports and after considering radiological, physical and dental reports were of the view that the O.P. No. 2 was more than 20 years of age on the date of examination. The Board, therefore, declared that on the alleged date of occurrence, the O.P. No. 2 was aged about 19 years 01 month and 25 days.

4. Being aggrieved by and dissatisfied with the order of the Board, O.P. No. 2 filed a criminal appeal before the learned Additional District and Sessions Judge-I, Gopalganj giving rise to Cr. Appeal No. 20 of 2021 which was heard on 03.08.2021. The learned Appellate Court reversed the order of the Board by applying Rule 12(3)(b) of the Juvenile Justice Rules, 2007 (hereinafter referred to as the 'Rules of 2007'). The learned Appellate Court held that as per the Medical Board report if the petitioner was aged about 20 years, on the alleged date of occurrence, he would be aged about 18 years on 26.02.2020. At this stage, if the principles of Rule 12(3)(b) of Rules of 2007 are applied, the accused would not be more than 16 years 10 months

and 26 days on the alleged date of occurrence. The learned Appellate Court relied upon the judgment of this Court in the case of **Karanvir Singh versus the State of Bihar** reported in **2020 (2) PLJR 279** which in turn is based on the judgment of the Hon'ble Supreme Court in the case of **Darga Ram @ Gunga versus the State of Rajasthan** reported in **(2015) 2 SCC 775**.

Submissions on behalf of the Petitioner

5. Learned counsel for the petitioner has assailed the impugned order on the ground *inter-alia* that the learned Appellate Court could not appreciate that the X-ray report of the O.P. No.2 clearly observed that “**based on all the above parameters bone age is above twenty years**”. It is submitted that the Medical Board in its second meeting held on 03.04.2021 considered the radiological, physical and dental findings and opined that the age of O.P. No.2 appears to be twenty years. The submission is that the Medical Board having noticed the X-ray report showing that the opposite party no. 2 was above twenty years had no reason to take a view that O.P. No.2 was aged about twenty years. It is submitted that the words ‘above twenty years’ in the X-ray report clearly indicates that the upper side of the age had not been clearly stated in the report and it could have been anything above twenty years. It is submitted that the test was conducted on or about 16.04.2021.

6. Learned counsel for the petitioner submits that the learned Appellate Court has interfered with the order of the Board on a wrong premise that the O.P. No.2 would be entitled for the benefit of Rule 12(3)(b) of the Rules of 2007.

7. It is submitted that the Government of India in its Ministry of Women and Child Development vide its notification contained in G.S.R. 671(E) dated 26th day of October, 2007 notified the rules under Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended by the Amendment Act 33 of 2006) (hereinafter referred to as the 'Act of 2000') to be administered by the States for better implementation and administration of the provisions of the said Act in its true spirit and substance. It was done by the Central Government in exercise of its power conferred by the proviso to sub-Section (1) of Section 68 of the Act of 2000. Learned counsel submits that Rule 12(3)(b) could have been applied to all such cases of juvenile which were pending on the date of coming into force of the Act of 2000 but the learned Appellate Court could not appreciate that the Act of 2000 was repealed by virtue of Section 111 of the Act of 2015. Sub-Section (2) of Section 111 of the Act of 2015 says that anything done or any action taken under the said Act shall be deemed to

have been done or taken under the corresponding provisions of the Act of 2015.

8. Learned counsel further submits that in fact what were provided under Rule 12(3)(b) of the Rules of 2007 have been incorporated with some modifications in form of Section 94 of the Act of 2015. However, with the coming into force of the Act of 2015, the Central Government framed the Model Rules of 2016 known as Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as the 'Model Rules of 2016') and on perusal of the Model Rules of 2016, it would appear that by Rule 94, the earlier Rules of 2007 notified by G.S.R. 679(E) dated 26th October, 2007 and as amended vide G.S.R. 903(E) dated 26th December, 2011 were repealed.

9. Learned counsel for the petitioner submits that it is only those actions which were taken or issued under the provisions of Rules of 2007 prior to the notification of Rules of 2016 insofar as those were not inconsistent with the provisions of the Rules of 2016, be deemed to have been taken or issued under the provisions of Rules of 2016. Further Section 25 of the Act of 2015 is a special provision in respect of pending cases and according to this, notwithstanding anything contained in the Act of 2015, all proceedings in respect of a child alleged or found to be in conflict

with law pending before any Board or court on the date of commencement of the Act of 2015 shall be continued in that Board or court as if the Act of 2015 had not been enacted. It is submitted that the State of Bihar has in exercise of its power conferred by the proviso to Sub-Section (1) of Section 110 of the Act of 2015 made the rules, namely, Bihar Juvenile Justice (Care and Protection of Children) Rules of 2017 (hereinafter referred to as the 'Bihar Rules of 2017') which is in consonance with the Model Rules of 2016 framed by the Central Government. It is submitted that on perusal of the Model Rules of 2016 as well as the Bihar Rules of 2017, it would appear that earlier provision of the Rules of 2007 providing the benefit of one year of age on the lower side has been done away with and now with the coming into force of the Model Rules of 2016, the benefit of one year would not be available. The present case would be covered by the Model Rules of 2016 and Bihar Rules of 2017. Thus, on this count also the learned Appellate Court has committed an error.

Submissions on behalf of the O.P. No. 2

10. On the other hand, learned counsel for the opposite party no. 2 has defended the impugned order of the learned Appellate Court. It is submitted that in this case in absence of the availability of the date of birth certificate from a school first

attended by the opposite party no. 2, the matriculation or equivalent certificates or the birth certificate given by a Corporation or Municipal Authority, the learned Board has rightly ordered for constitution of a Medical Board to declare the age of the juvenile or the child. It is submitted that the Hon'ble Apex Court has in many cases taken a view that radiological examination for purpose of the age determination is not very reliable and there is always a possibility of an error of plus and minus two years. He has relied upon the judgment of the Hon'ble Apex Court in the case of **Ram Suresh Singh versus Prabhat Singh and Another** Reported in (2009) 6 SCC 681 and **Om Prakash versus the State of Rajasthan and Another** reported in (2012) 5 SCC 201.

Consideration

11. Having heard learned counsel for the parties and on perusal of the records, this Court finds that while taking up the exercise of age determination, the Board has taken note of the age determination by the Medical Board as twenty years and thereafter held that if the date on which the occurrence has taken place is taken into consideration, on the said date the O.P. No. 2 would be aged about 19 years 01 month 25 days which would be more than 18 years. It is evident from the order of the learned Board that no

evidence of the expert was taken and the lower side of the age which was assessed at twenty years has been taken into consideration for calculation of the age of O.P. No.2 on the alleged date of occurrence. At the cost of repetition, it may be mentioned that in the X-ray report the age of the O.P. No.2 was showing 'above twenty years' but no upper extremity was provided. It may be said to be a completely vague kind of report and the Board did not take any pain to make an inquiry as envisaged under the Act of 2015 for purpose of determination of age. The Appellate Court has also gone by the lower side of the age without appreciating that the Hon'ble Apex Court has in the case of **Darga Ram** (Supra) had by way of example taken the upper extremity limit of 36 years and then held that the same would have been subject to variation of plus and minus two years meaning thereby that he would as well be 34 years on the date of examination. The Hon'ble Apex Court had also doubted as to whether the manner in which the Medical Board had spread over the age of the accused in the said case to be in the range of 30 to 36 years as on the medical examination would be a correct way of estimating the age. If the judgment in the **Darga Ram** (supra) is applied in its spirit, in absence of upper extremity limit provided in the medical report of the Medical Board, it would not have been possible for the Board to take an

appropriate view of the matter. In case the Board wanted to proceed on the basis of the said report alone, the examination of the experts/Civil Surgeon who had prepared the report would have thrown some light.

12. This Court having examined the submissions of the learned counsel for the petitioner as regards the applicability of Rule 12(3)(b) of Rules of 2007 agrees with the submission that in this case Rules of 2007 would not be applicable because the date on which the occurrence took place i.e. 26.02.2020, the Model Rules of 2016 and the Bihar Rules of 2017 had already come into force. The Rules of 2007 has been repealed as has been taken note of hereinabove by this Court. Thus, under the new scheme of the Act of 2015 which lays down the procedure for determination of age under Section 94, the benefit of one year of age in the lower side would not be available.

13. From a recent judgment in the case of **Pawan Kumar versus the State of Uttar Pradesh and Others** reported in **2023 SCC Online SC 1492**, the Hon'ble Apex Court has taken note of some of the cases in which the provision of declaring a child within the meaning of the Act of 2015 by conducting ossification test have been discussed.

14. In view of the above discussion, this Court is of the considered opinion that the impugned orders are liable to be set aside with direction to the Board to determine the age of the O.P. No.2 afresh after seeking opinion of the Medical Board duly constituted by the Civil Surgeon, Gopalganj with experts from all concern departments and declare the age of the O.P. No.2 after conducting an appropriate inquiry in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

15. In result, this revision application stands disposed of with the aforesaid directions.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
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