

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1247 of 2023

Arising Out of PS. Case No.-1 Year-2021 Thana- MAHILA PS District- Buxar

ARVIND RAM @ CHHOTAK RAM, Son of Budhan Ram Under guardianship of his Budhan Ram Son of Sury Ram), Resident of village - Chakani, P.S.- Simri, District – Buxar. Appellant/s
Versus

The State of Bihar. Respondent/s

Appearance :

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 01-02-2024 1. The present appeal preferred challenging the impugned judgment dated 03.12.2022 passed by the learned A.D.J.-VI-Cum-Spl. Judge POCSO Act, Buxar in POCSO Case No. 01/2021, while deciding the petition under Section 34 of the POCSO Act, 2012, appellant was declared major, above 18 years of age on the date of occurrence i.e. on 02.01.2021 to 08.01.2021.

2. It would be appropriate to re-produce in this connection, Section 34 of the POCSO Act, 2012 and same is as under:-

*“34. Procedure in case of commission of offence by child and determination of age by Special Court.- (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.
(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special*



Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person”.

3. It would further be appropriate to re-produce Section 94 of the Juvenile Justice (Care and Protection) Act, 2015, which is as under:-

“94. Presumption and determination of

age – (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(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;

(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:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person”.

4. The opening word of Section 34(1) of the POCSO Act, says that where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, clearly specifying that the age of accused claiming juvenile be decided in view of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, where at first instance, as per Section 94 (2) of J.J. Act, the date of birth be ascertained from the school, matriculation, or equivalent certificate from the concerned examination board, if available and in absence thereof the birth certificate given by a corporation or a municipal authority or a panchayat be taken into consideration and as last resorts age issue be decided by



ossification test.

5. In present case, while making a preliminary enquiry, learned trial court despite of having the evidence regarding age of juvenile in conflict with law (JICL) from the first attending school refused to accept the same, for the reason that the alias name of JICL was not available there, which is “Arbind Ram.”

6. It appears that the juvenile in issue was the student of Primary School, Chakani, where his name was entered in register as “Chhotak Ram.” This fact was supported by APW-1, namely, Lalit Mohan Singh, who was the principal of Primary School. The relevant entry of school register were also exhibited as **Exhibit-A**. In support of same, father and mother of JICL was also examined as PW-2 and PW-3, school leaving certificate and ration card were also exhibited.

7. Learned counsel while appearing on behalf of appellant submitted that despite of all such things in support of age of appellant/juvenile in conflict with law, merely on the ground that the alias name as “Chhotak Ram” was not mentioned in FIR, the entire evidences of first attending school were discarded to accept.

8. It is pointed out that the principal of the Primary



School clearly deposed that he may identify “Chhotak Ram” but despite of same, “Arvind Ram” was not produced before him as to establish whether “Arvind Ram” and “Chhotak Ram” are the same person.

9. From the perusal of impugned order, it appears that the learned trial court instead of determining the questions whether appellant is child or not, in view of Section 34 of the POCSO Act *prima facie* decided the identification of the appellant. Moreover, the ossification test report was also ignored.

10. In view of aforesaid order dated 03.12.2022 passed by the learned A.D.J.-VI-Cum-Spl. Judge POCSO Act, Buxar in POCSO Case No. 01/2021 is hereby quashed and set aside, with a direction to the learned trial court to decide the age of appellant in accordance with law, as discussed above.

11. The aforesaid determination be made within 30 days from the date of receipt of this order.

12. Accordingly, this appeal stands allowed and disposed of.

(Chandra Shekhar Jha, J.)

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