

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.921 of 2019

Arising Out of PS. Case No.-57 Year-2015 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

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Vidyasagar Singh Son of Late Ram Nihor Singh Resident of Village - Jewari,
P.S.- Durgawati, District - Kaimur at Bhabua

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sujit Singh Son of Shiv Shankar Singh Resident of Village - Kasher, P.S.-
Bhagwanpur, District - Kaimur at Bhabua

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Advocate
For the Respondent/s : Mr. Anil Prasad Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 31-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The opposite party no.2 is an accused in respect of
Bhagwanpur P.S. Case No.57 of 2015 under Section 304(B)/34
of the Indian Penal Code.

3. The case of the defect of complainant who happens
to be the father of the deceased is that marriage of his daughter
was solemnized with the accused on 13.02.2015, within three
months of marriage on 01.05.2015 the daughter of the defect of
complainant had met with an unnatural death at her matrimonial
home on the basis of said complaint, police registered the above
mentioned case and took of the case for investigation. Charge



sheet has been submitted against the accused under Section 304(B)/34 of the Indian Penal Code. In the said case the accused took a plea that he was a juvenile on the date of commission of the alleged offence. The learned Sub-Divisional Magistrate, Kaimur at Bhabua held the accused to be a juvenile on the date of commission of offence on the basis of a copy of provisional matriculation certificate submitted on behalf of the accused.

4. On the contrary it is the case of defect of complainant that in the year 2011 Bhagwanpur P.S. Case No.06 of 2011 was registered against the present accused under Sections 452, 341, 354, 307, 324/34 of the Indian Penal Code and Section 27 of the Arms Act. In the said proceeding also the petitioner claimed to be a juvenile. In the said case, the petitioner stated his date of birth by filing an application as on 28.01.1996. The said case was sent to the Juvenile Justice Board for ascertainment of age of the accused. At that point of time the accused could not produce any matriculation certificate but on the basis of ossification test report his date of birth was considered within 16 year and 18 years at the relevant point of time. The defect of complainant has also produced the Voter I.D. Card from which it is ascertained that the victim was major in 2015.



5. The learned S.D.J.M. did not send the case record to the Juvenile Justice Board for ascertainment of age of the accused under the provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Only on the basis of a provisional matriculation certificate, the learned Sub-Divisional Magistrate held the accused to be juvenile on the date of commission of offence in the month of May, 2015.

6. The defect of complainant preferred an appeal being Criminal Appeal No.34 of 2015 before the learned Additional District & Sessions Judge, Children Court, Kaimur at Bhabua assailing the order passed by the learned S.D.J.M., Kaimur, the said appeal filed by the defect of complainant was dismissed on the ground that approximate aged determined on ossification test by the medical board cannot prevail over the provisional matriculation certificate of the accused.

7. The learned Court of Appeal did not consider that when there is two different views with regard to the age of the accused and in earlier case the accused himself claimed to be his date of birth on 28.01.1996, the age of the accused ought to have be determined by the Juvenile Justice Board under the provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.



8. For the reasons stated above, the impugned order dated 13.05.2019 passed in Criminal Appeal No.34 of 2015 is quashed and set aside. The Juvenile Justice Board, Kaimure is directed to make an enquiry under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 to ascertain the age of the accused, only after ascertainment of the age, final decision shall be taken as to whether the accused shall be tried in the criminal law having jurisdiction or by the Board.

9. The impugned order dated 13.05.2019 is accordingly quashed and set aside. Accordingly, the instant revision is allowed.

(Bibek Chaudhuri, J)

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