



2024:DHC:7256



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:20.09.2024

+ **CRL.REV.P. 197/2023 & CRL.M.A. 4952/2023**

SATBIR

..... Petitioner

versus

STATE GNCTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. A.K. Chadha & Mr. Akhil Sabharwal,
Advocates.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State
along with Mr. Dhruv Saini, Mr. Harsh
Tomar & Ms. Jahnvi Nautiyal, Advocates &
SI Surabhi (P.S. Mandawali).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present revision petition is filed *inter alia* challenging the order dated 02.08.2022 (hereafter '**the impugned order**'), passed by the learned Special Judge, East District, Karkardooma Courts, Delhi, in SC No. 2032/2016 arising out of FIR No. 981/2015, registered at Police Station Mandawali. The petitioner also seeks that the petitioner



be declared to be a Juvenile on the date of the alleged incident on the basis of the findings in the Ossification test report.

2. The learned Trial Court, by the impugned order, dismissed the application filed by the petitioner to declare him as a Juvenile.

3. The present FIR was lodged at the instance of the maternal uncle of the prosecutrix on 24.10.2015 on the apprehension that the prosecutrix had been kidnapped. The prosecutrix was thereafter recovered. The alleged date of the incident, as per the prosecution, is 20.10.2015/21.10.2015.

4. The petitioner moved an application under Section 45 of the Indian Evidence Act, 1872 for his ossification test through his mother as he had no related documents to prove his age. The said application was allowed and the ossification test of the petitioner was conducted at LBS Hospital on 28.11.2017.

5. In the Ossification Test Report dated 29.11.2017, the age of the petitioner is adjudged to be between 21 to 22 years. There is an apparent discrepancy in the report wherein while the range of the petitioner's age is written to be between 21 to 22 years in numericals, however, in words, the age is stated to be between twenty to twenty two years. The relevant portion of the report is reproduced hereunder:

The Medical Board met on 29/11/17 and the person was examined Physically, Dentally and Radiologically for age determination (Performa and x-rays of examination attached).
After Physical examination, Dental examination and Radiological examination, the Medical Board is hereby to opine the age of person is between (21) Twenty to (22) Twenty Years.



6. The Ossification Test Report was duly exhibited and the doctors who had examined the petitioner and issued the report were examined on 19.04.2022 (CW1) and 02.05.2022 (CW2) respectively. CW1 deposed that the age of the petitioner was opined to be between 21-22 years. He admitted in the cross examination that the age range was mentioned as 20-22 years in the forwarding letter. On a question by the learned Additional Public Prosecutor for the State, he clarified that the word 'one' was inadvertently not typed after the word 'twenty'. CW2 was not cross-examined.

7. On 11.05.2022, the petitioner filed an application for deciding his juvenility on the basis of the Ossification Test Report and relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Darga Ram v. State of Rajasthan : (2015) 2 SCC 775.***

8. The learned Trial Court in the impugned order observed that the ossification test of the petitioner was done in respect of multiple joints and therefore the margin of error was significantly on the lower side. In this regard, the learned Trial Court relied upon the judgment of a Coordinate Bench of this Court in ***Mohd. Wasim v. State : 2012 SCC OnLine Del 2862.*** The relevant portion of the impugned order reads as under:

“10. In the present case, medical board opined that in the ossification test, the epiphysis of shoulder, elbow, wrist, hip , knee and ankle joints as well as iliac crest and ischiel tuberosity have appeared and fused . The medial ends of clavicle were not found. In the dental examination, all teeth were found and on the general appearance of the accused, the medical board came to the conclusion that age of the accused is between 21-22 years.

XXX



13. *It is, therefore, apparent that test is done in respect of the multiple joints and therefore the margin of error is significantly on the lower side and thus medical board came to an acceptable and reasonable conclusion in respect of the age of the accused.*

14. *The ossification test was conducted on 28.11.2017 and the alleged incident is stated to have occurred on 20/21.10.2015.*

15. *Taking into consideration age of the accused was opined to be 21-22 years on 28.11.2017 and if the same is relate back to the date of offence i.e. 20/21.10.2015, the accused would be about 19 years of age i.e. more than 18 years.*

16. *In view of the above-mentioned discussion and considering the totality of the facts and circumstances, the application/request for declaring the accused juvenile or 'or sending the matter to Juvenile Justice Board is dismissed."*

9. The learned counsel for the petitioner submitted that the learned Trial Court had failed to appreciate the settled law relating to the method of determination of age based on the ossification test.

10. He submitted that the age of the petitioner was adjudged as 21 years to 22 years as on the date of the medical examination, that is, 28.11.2017, as per which the petitioner would have been 18years 10 months and 22 days old on the date of the incident, that is, 20.10.2015.

11. He submitted that if the principle of margin of error of two years was applied, the age of the petitioner would come to be 16 years 10 months and 22 days on the date of the incident. He submitted that the said age is further liable to be reduced by one year under Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, whereby the age of the petitioner at the time of the incident would thus come down to 15 years 10 months and 22 days on the alleged date of the incident.



12. He submitted that it is a settled proposition of law that benefit of doubt at all stages goes in favour of the accused. He placed reliance on the judgment in the case of **Triveni Ben v. State of Gujarat : (1989) 1 SCC 678**.

13. He further submitted that in the present case, the prosecutrix had recorded her statement twice under Section 164 of the CrPC. He submitted that the first statement of the prosecutrix that was recorded on oath supported the case of the petitioner, however, the second statement tendered by the prosecutrix was against the petitioner.

14. He placed reliance on the following judgments in support of his argument that the benefit of margin of error of two years on either side has to be given to the accused when age is determined through the ossification test:

- i) **Jaya Mala v. Govt. of J & K : (1982) 2 SCC 538;**
- ii) **Rajak Mohammad v. State of H.P. : (2018) 9 SCC 248;**
- iii) **State (NCT of Delhi) v. Shiva : 2012 SCC OnLine Del 1622;**
- iv) **Shweta Gulati v. State (NCT of Delhi) : 2018 SCC OnLine Del 10448; and**
- v) **State (NCT of Delhi) v. Mohd. Jabbar : 2022 SCC OnLine Del 4007.**

15. The learned Additional Public Prosecutor for the State opposed the present petition. He submitted that the learned Trial Court had



adequately applied its mind to the propositions of law and the precedents adduced by the petitioner.

16. He submitted that the age of the petitioner was adjudged to be in a very specific age range in the Ossification Test Report and the same could not be unduly lowered further so as to treat the petitioner as a juvenile.

ANALYSIS

17. The limited question before this Court is whether the petitioner is to be treated as a juvenile on the date of the incident on the basis of the Ossification Test Report.

18. It is argued by the petitioner that he is entitled to the benefit of margin of error of two years on each end. It is also argued that it is incumbent on the Court to grant the said benefit by deducting two years from the lower end as the benefit has to go to the accused.

19. The said contention is unmerited and without any foundation.

20. The Hon'ble Apex Court in the case of ***State of U.P. v. Chhotey Lal*** : (2011) 2 SCC 550 noted that there was no such rule that two years margin has to be applied to the age determined by doctor. The relevant portion of the said judgment is reproduced hereunder:

“13. We find ourselves in agreement with the view of the trial court regarding the age of the prosecutrix. The High Court conjectured that the age of the prosecutrix could be even 19 years. This appears to have been done by adding two years to the age opined by PW 5. There is no such rule much less an absolute one that two years have to be added to the age determined by a doctor...”

(emphasis supplied)



21. In ***State of U.P. v. Chhotey Lal*** (*supra*), the Bench relied upon the decision in the case of ***State of Karnataka v. Bantara Sudhakara : (2008) 11 SCC 38***, wherein the three Judge Bench of the Hon'ble Apex Court had noted as under:

“12... Additionally, merely because the doctor's evidence showed that the victims belong to the age group of 14 to 16, to conclude that the two years' age has to be added to the upper age-limit is without any foundation.”

(emphasis supplied)

22. Insofar as the judgment in ***Darga Ram v. State of Rajasthan*** (*supra*) is concerned, the learned Trial Court has rightly distinguished the same on facts. It was rightly noted that in the case of ***Darga Ram v. State of Rajasthan*** (*supra*), there was no definite finding in regard to the age of the accused and the same had been vaguely assessed to be “about” 33 years, however, in the present case, the medical board had come to a conclusion regarding the petitioner's age after testing multiple joints. The approach in ***Darga Ram v. State of Rajasthan*** (*supra*) was specific to the peculiar facts of the case and cannot be generalized.

23. Thus, it is clear that the margin of error is not absolute in nature. In the present case, the ossification was done in regard to multiple joints as per the Ossification Report. It was noted that— *“the epiphysis of shoulder, elbow, wrist, hip, knee and ankle joints as well as iliac crest and ischiel tuberosity have appeared and fused. The medial ends of clavicle have not found”*. After physical examination, dental examination and radiological examination, the petitioner was opined to be 21-22 years of age. On the basis of the same, the learned Trial



Court noted that the margin of error was significantly on the lower side.

24. The learned Trial Court has placed reliance on the judgment in the case of ***Mohd. Wasim v. State*** (*supra*) where it was held that while the margin of two years can be given when age is determined on the basis of ossification test, the same is not the case when multiple joints are tested. The Court also considered as to when the benefit of one year under Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ought to be given. The relevant portion of the said judgment is reproduced hereunder:

*“11. After considering the physical, dental and radiological examination, the age of the accused was opined between 25-30 years on the date of examination i.e. 23.01.2012 by the Medical Board at AIIMS (Ex. CW-6/A). It is not disputed that the determination of age on the basis of ossification test is only an estimation and not conclusive. In practice, such determination is extremely difficult and cannot fix age with certainty because it is considered an inexact science where the margin of error can be 2 or 3 years on either side. Relying on the judgment of this Court ‘State of NCT of Delhi v. Shiva’ (Crl. L.P. 172/2008), the counsel contended that the margin of error in age ascertained by radiological examination is two years on either side and the benefit of such margin of error should have been given to the Appellant. We are un-persuaded with this argument. **According to the authorities referred on medical jurisprudence, benefit of margin of error of two years on either side at the maximum can be given in case of determination of age based on ossification test. It is however not so, in case of radiological examination for multiple joints.***

12. In the case of ‘Lal Bahadur v. The State’ (Crl. R. 145/2003 decided on 25.07.2003) this Court extracted the passage from Jhala and Raju's Medical Jurisprudence:

*“If ossification test is done for a single bone, the error may be two years either way. **But if the test is done for multiple joints with overlapping age of fusion, the***



margin of error may be reduced. Sometimes this margin is reduced to six months on either side.”

And held:

“In the present case, the radiological examination of the petitioner was done for multiple joints, which is evident from the report of the Medical Board. According to the petitioner's own plea, he was just short of eight days in completing 18 years on the date of alleged commission of offence by him. Learned counsel for the petitioner contended that even if the age of the petitioner is to be ascertained in the light of medical report, by giving the benefit of margin of two years, on the date of alleged commission of offence, he would be found to be less than 18 years of age, and thus, a juvenile. While advancing such an argument, learned counsel for the petitioner appears to have taken the age as reflected in the medical report exactly at 21 years losing sight of the fact that it is actually above 21 years, which implies that it could be anything above 21 years. **Taking into account radiological examination in respect of multiple joints, in view of above extracted passage from Medical Jurisprudence by Jhala & Raju, the margin of error in ascertaining the age of the petitioner could be reduced to six months on either side.....”**

13. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 does not indicate to allow any such benefit. Rule 12(3)(b), however, empowers the Court or the Board or as the case may be the committee, for the reasons to be recorded, if considered necessary to give benefit to the child or juvenile by considering his/her age on the lower side within the margin of one year.

XXX

17. It is apparent from the Rule 12(3)(b) that the relaxation of one year is not automatic but it should be granted after considering all the evidence available on record.

18. In the instant case, the accused and his family members did not produce the documents in their power and possession and concealed the age of the Appellant. It is not believable that during all the years the accused or his family members did not cast their vote or did not draw any ration. The State produced and proved these documents during enquiry; the existence of these documents remain unchallenged. Considering the conduct of the Appellant



and his family members in withholding the official documents, and the position of law on the subject, we are not inclined to give relaxation of one year under Rule 12(3)(b), which does not in any manner inhibit the Court from taking into account all available materials. The substantive power or jurisdiction under Section 7-A to hold inquiry and make determinations can be seen along with Rule 12. However, the latter, being only a rule, cannot preclude the Court from considering the effect of all materials brought on record during the inquiry.”

(emphasis supplied)

25. It is argued that the benefit of one year under Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 should be given to the petitioner. While Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is *pari materia* to Rule 12 of the Juvenile Justice Rules, 2007, the same does not provide for any margin. However, the Hon’ble Apex Court has observed in the case of **Ram Vijay Singh v. State of Uttar Pradesh : Criminal Appeal No. 175/2021** that the reliability of the ossification test remains vulnerable as was under Rule 12 of the Juvenile Justice Rules, 2007. In the present case, the crime was committed when the JJ Act (2000) was in force.

26. As noted in the case of **Mohd. Wasim v. State** (*supra*), the benefit under Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is discretionary and the same need not be accorded in every case.

27. The phrasing of the Rule makes it clear that the same is to be accorded if considered necessary after taking into consideration the evidence as may be available or the medical opinion and such a benefit is to be “within the margin of one year”.



28. It is trite law that a hyper technical approach cannot be taken while determining the question of juvenility, however, in view of the passage from *Jhala and Raju's Medical Jurisprudence* that was relied upon by the Coordinate Bench of this Court in ***Lal Bahadur v. The State : (Crl. R. 145/2003 decided on 25.07.2003***, when multiple joints have been tested, the margin can be reduced to six months.

29. The said view also finds support from *Modi's Medical Jurisprudence and Toxicology*, 24th ed., page 238 which provides that the a fairly close estimate can be given *within* a margin of two years in young boys between 20-21 years of age. In the present case as well, the age of the petitioner has been assessed within a margin of one year. It also provides that the correct method in such cases is to allow a margin of error of six months on either sides. The relevant portion of the same is reproduced hereunder:

“In ascertaining the age of young persons, radiograms of several main joints of the upper of the lower extremity of one or both sides of the body should be taken, and an opinion should be given according to the following table. However, it must be remembered that too much reliance should not be placed on this table as it merely indicates an average and is likely to vary in individual cases even of the same province, owing to the eccentricities of development (see the following table). According to Dr HS Mehta, ‘from puberty to the consolidation of skeleton (about 18 years in girls and about 20-21 years in boys), a fairly close estimate within a margin of two years may be made, mainly on the progress of the epiphyseal union (ossification test)’. This agrees with Flecker’s observation. The method of estimating age is to calculate the approximate age after considering the (a) physical characteristics, (b) secondary sex characteristics, and (c) ossification tests and after allowing a margin of error of six months on either side. Thus, if the sum total of all these rests seems to indicate that the age is between fifteen and sixteen, a margin of error of six months on



either side would make, according to the recommended method, an estimated age of between 14½ to 16½ years.”

30. No argument has been addressed as to why the benefit of one year should be granted to the petitioner apart from the fact that Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides for the same. In such circumstances, this Court does not deem it apposite to give benefit of margin of one whole year to the petitioner.

31. Considering the nature of the evidence, if the rationale of *Jhala and Raju's Medical Jurisprudence* and *Modi's Medical Jurisprudence and Toxicology* is applied and six months margin is accorded, even on the lower end, the petitioner would still be above the age of eighteen on the date of the incident.

32. In view of the above, this Court finds no reason to interfere with the impugned order.

33. The present petition is dismissed.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024