

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 971 of 2024

Arising Out of PS. Case No.-78 Year-2017 Thana- BUXAR District- Buxar

Praveen Khatoon Son of Feroz Khan village- Badki Sarimpur Police Station
-Buxar Industrial District- Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parijat Saurav, Advocate. Mr. Ritesh Abhishek, Advocate.
For the Opposite Party No. 2	:	Mr. Ravi Shankar Pathak, Advocate.
For the State	:	Ms. Asha Kumari, APP.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 31-07-2025 1. The instant revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenges an order, dated 6th of September, 2024, passed by the learned Additional Sessions Judge, 2nd Court at Buxar, upon an application filed on behalf of the petitioner with a prayer that the petitioner was a juvenile on the date of commission of offence.

2. It is not in dispute that the petitioner along with her other family members are charge-sheeted accused persons in connection with Buxar Town P. S. Case No. 78 of 2017, registered on 28th of February, 2017.



3. It was alleged in the F.I.R. that as daily habit, the mother of the informant with another lady went to the bank of the river for morning walk through the bridge on the river. When, she was walking, on 22nd of February, 2017 at about 07.00 a.m., the petitioner along with other accused persons came in a group being armed with knives in their hands and started assaulting the mother of the informant with the help of the knives all over her body, causing her death.

4. After investigation of the case, police submitted charge-sheet and trial of the case is pending before the learned Additional Sessions Judge, 2nd Court at Buxar. On 29th of August, 2024, the petitioner submitted an application, stating, inter alia, that on the date of occurrence, she was a juvenile, as her date of birth was 20th of April, 2002. In support of her contention, the petitioner filed one birth certificate, issued on 31st of January, 2014, registering her date of birth as 20th of April, 2002. In support of the date of birth of the petitioner and veracity of the birth certificate, the parents of the petitioner also filed affidavits before the Trial Court.



5. On 5th of September, 2024, the informant filed a rejoinder against the above-mentioned petition, alleging, inter alia, that in the year 2016, on the basis of a complaint filed by the present petitioner, a case under Section 376 of the Indian Penal Code was registered against one Md. Javed. In the said case, the petitioner claimed herself to be aged about 20 years at the relevant point of time. During investigation of the case, statement of the petitioner was recorded under Section 164 of the Cr.P.C. and she stated at the relevant point of time that she was aged about 20 years. In order to ascertain her age, ossification test was also conducted and the Medical Officer found her age to be between 19-20 years. The mother of the petitioner was also deposed where she said on oath that the victim was aged about 22-23 years.

6. It is submitted by the learned Advocate for the Opposite Party No. 2 by filing a supplementary affidavit, stating above-mentioned facts that the application filed by the petitioner before the learned Additional Sessions Judge, 2nd Court at Buxar, is false, concocted and based on a manufactured birth certificate because the birth certificate



was issued after 12 years of her birth without following mandatory provision of enquiry by the Sub-divisional Officer or the Block Development Officer. The birth certificate also does not bear the counter signature of the Block Development Officer. Therefore, the said birth certificate cannot be taken into consideration.

7. I have heard the learned counsels for the petitioner and the Private Opposite Party No. 2 as well as the learned APP.

8. Sub-section (2) of Section 9 states: -

“(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be



raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.”

9. In ***Rishipal Singh Solanki v. State of U.P.***, reported in ***(2022) 8 SCC 602***, the Hon'ble Supreme Court laid down the guidelines relating to the procedure followed by a Court when a person claims juvenility at any stage of procedure. The Hon'ble Supreme Court in paragraph no. 33 of the aforesaid judgement held as hereunder: -

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the



court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded



by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a) (i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.



33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hypertechnical approach should not



be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. *If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.*

33.9. *That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.*

33.10. *Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic*



as per the provisions of the Evidence Act viz. Section 35 and other provisions.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

10. Section 94 of the said Act lays down the procedure regarding presumption and determination of age.

The provision runs thus: -

“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.”

11. In the instant case, the Opposite Party No. 2 raised a doubt against the age of the petitioner on the ground that she herself deposed that she was aged about 20 years in 2016. Sub-section (2) of Section 94 lays down the detailed provision when there is reasonable ground for doubt as to whether a person is a child or not.

12. In that case, the Board is under obligation to 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.

13. The Juvenile Justice (Care and Protection of Children) Act, 2015 empowers the exclusive power to the Board to determine the age of a person if at any stage of trial, he / she claims juvenility on the date of commission of offence.

14. In a subsequent decision, in the case of ***Thirumoorthy v. State represented by the Inspector of Police***, reported in ***2024 INSC 247***, the same principle has been laid down by the Hon'ble Supreme Court

15. The learned Advocate appearing on behalf of the petitioner also refers to another decision in the case of ***Rahul Kumar Yadav v. The State of Bihar***, reported in ***2024 SCC OnLine 723***, where the appellant filed an application raising the claim of juvenility based on a horoscope before the learned Chief Judicial Magistrate. The said application was rejected. Further, before the Trial Court, the birth certificate was presented and the plea of



determination of age was raised. The learned Trial Court rejected the said prayer by observing that the said certificate was not presented along with the application filed earlier before the learned Chief Judicial Magistrate.

16. On the above factual circumstances, it is held by the Hon'ble Supreme Court that proper enquiry in accordance with the provisions of the JJ Act, 2000 or the JJ Act, 2015 was not carried out so to consider the prayer made by the appellant to be treated as juvenile on the date of the incident even though the plea was raised at the earliest opportunity. It can be said without a cavil of doubt that the plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry.

17. In the instant case, the learned Additional Sessions Judge, 2nd Court at Buxar committed the same error. He ought to have sent the application filed by the petitioner to the J. J. Board for conducting enquiry under Section 9(2) read with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

18. The Trial Court failed to follow the direction of the Statute.



19. Therefore, the impugned order, dated 6th of September, 2024, passed by the learned 2nd Additional District & Sessions Judge, Buxar, is incorrect, illegal and invalid.

20. The impugned order is, accordingly, set aside.

21. The instant revision is allowed.

22. The Trial Court is directed to send the copy of application filed by the petitioner on 29th of August, 2024 to the Juvenile Justice Board for conducting proper enquiry as to the age of the petitioner in accordance with the provisions contained in Section 9(2) read with Section 94 of the J. J. Act, 2015.

(Bibek Chaudhuri, J)

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