

(2009) 10 PAT CK 0033
In the Patna High Court
Case No : Criminal Revision No. 42 of 2009

Bharth Yadav and Manjay Yadav

APPELLANT

Vs

State of Bihar and Prabhu Paswan

RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Arms Act, 1959 — Section 27

Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12(3)

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 10 PAT CK 0033

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Prakash Mahto, for the Appellant; Ajay Kumar No. 1, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mandhata Singh, J.—In a case for the offence u/s 302 of the Indian Penal Code and Section 27 of the Arms Act, a claim was made on behalf of the petitioner about his being juvenile. Enquiry was conducted and several opportunities were given to the parties as they adduce oral and written documentary evidence. Medical Board was also constituted which submitted its opinion and after taking into consideration all the aspects discussing the witnesses, age of the petitioner was assessed beyond juvenility. His prayer for declaring him juvenile is rejected.

2. Now the single point advanced on behalf of the learned Counsel for the petitioner is that after coming into existence of Juvenile Justice (Care & Protection of Children) Rules 2007 there is no scope at all to deviate from the direction made in Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules.

3. Rule 12(3) runs as follows:

(3) In every case concerning a child or juvenile in conflict with law, the age

determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the Clauses (a) (i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

4. It is bounden duty of the Board to first accept matriculation or equivalent certificate. If not available then date of birth certificate from school (other than a play school) first attended and in absence whereof the birth certificate given by a Corporation or Municipal authority or a Panchyat and in absence of all opinion of a Medical Board. In this case there was no matriculation certificate or date of birth certificate from first attended school or from the Municipal Authority or Panchayat, so Medical Board was constituted which examined the petitioner on 28.7.2008 and opined petitioner's age in between 23 to 24 years while the occurrence took place on 28.5.2001. So on that day it comes in between 16 to 17 years.

5. This much is opposed on behalf of the learned Counsel for the opposite parties that there is certain admission of the petitioner and his father. Apart from some admission made by his father in his statement recorded on 18.4.2008 in course of enquiry, an affidavit is said to be sworn before the Election Authority on March, 2001 showing the petitioner major and in statement his father has stated about his marriage 20 years ago but in my opinion above referred evidence hardly can be accepted for determination of the age of a person claiming him juvenile.

6. In this case, opinion of the Medical Board is only relevant and that is in between 16 to 17 years. Any deviation from the same giving parties so much so

opportunity to adduce oral and documentary evidence is not proper and justified. It is only a fruitless talk of the trial court.

7. The revision petition is allowed. The order dated 29.11.2008 passed by Addl. Sessions Judge, Jamui, in Sessions Trial No. 349 of 2007 arising out of Jamui P.S. case No. 77 of 2001 is set aside. The petitioner is declared juvenile.