

(2018) 07 MP CK 0119

In the Madhya Pradesh High Court

Case No : Criminal Appeal No 265 Of 2012

DeVsingh @ Udaysingh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376, 376(2), 506
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 68(1)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 12(3), 19

Citation : (2018) 07 MP CK 0119

Hon'ble Judges : S.K.Awasthi, J

Bench : Single Bench

Advocate : P.L. Newalkar, K. Pathak

Final Decision : Dismissed

Judgement

Conviction,,Sentence,

Section 363, IPC, 3 years R.I. Rs.1000/-, 1 month
Section 376(2)(Cha), IPC, 10 years R.I. Rs.2000/-, 2 months
of fine

506, IPC, "Rs.500/-",

Rs.500/-",

14. In the case of Jarnail Singh v. State of Haryana reported in (2013) 7 SCC 263, the Supreme Court has held as under:-",,,

22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection) Rules, 2007 (hereinafter referred to as the 2007 Rules). The

of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The

of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The

of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The

aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:",,,

12. Procedure to be followed in determination of age: (1) in every case concerning a child or a juvenile in conflict with law, the court or the",,,

Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in",,,

conflict with law within a period of thirty days from the date of making of the application for that purpose.",,,

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may",,,

be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home",,,

or in jail.",,,

(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 where of;",,,

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

(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) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the",,,

conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age",,,

and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or",,,

the person concerned.,,,

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further",,,

inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-,,,

rule (3) of this rule.,,,

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in",,,

accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate",,,

order in the interest of the juvenile in conflict with law."",,,

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory",,,

provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view,Â there is hardly any difference in so far",,,

as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it",,,

would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix PW-6.",,,

The manner of determining age conclusively, has been expressed in subrule (3) of Rule 12 extracted above.Â Under the aforesaid provision, the age",,,

of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under",,,

Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated",,,

option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the",,,

concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the",,,

said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date",,,

of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in",,,

the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet",,,

again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child",,,

concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3)",,,

postulates the determination of age of the concerned child, on the basis of medical opinion.â??",,,

15. As per Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, the following documents are required for determination of age :-",,,

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

(ii) 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 corporation or municipal authority or a panchayat;,,,

(b) and only in the absence of either (i), (ii) and (iii) of clause a a above, the medical opinion will be sought from a duly constituted Medical Board,",,

which will declare the age of the juvenile or child.,,,

16. In the present case the school certificate of theprosecutrix is available and as per the certificate the age of the prosecutrix was about 9 years at,,,

the time of incident. This is also substantiated from the testimony of Parmilabai (PW3), mother of the prosecutrix and ossification test report.",,

Therefore, it is proved that the prosecutrix was below 12 years on the date of incident.",,

17. Now the next question is that whether the appellant is guilty of committing rape upon the prosecutrix ?,,,

18. I have gone through the evidence of prosecutrix (PW1), Parmilabai (PW3), Bablu (PW5) and Sunderbai (PW6) and found that there is no material",,,

contradiction, omission exaggeration or improvement in their statement. They remained firm and consistent in their cross-examination. Their",,,

statements are corroborated by the medical evidence as well as FSL report and there is no material available on record to demonstrate that these,,,

witnesses are falsely implicating the appellant in the offence. Therefore, the evidence of these witnesses are found reliable and trustworthy. Thus, the",,,

trial Court did not commit any illegality or perversity in relying upon the testimony of the aforesaid witnesses.,,,

19. From the aforesaid discussion, it is found to proof that on the date of incident i.e. 20.12.2009, the prosecutrix was minor and having aged about 9",,,

years. Accused took her alluring to bring Sev Parmal (Snacks) and after that he committed rape with her. Under these circumstances, the trial",,,

Court has rightly convicted the appellant for the offence under Section under sections 363, 376, 506 of I.P.C. There is no substance in the appeal as",,,

filed by the appellant and there is no reason warranting any interference in the impugned judgment passed by the trial court. Consequently, appeal is",,,

hereby dismissed. The trial",,,

20. The appellant is in jail. A copy of the judgment be also sent to the trial Court along with its record for information.,,,