
(2017) 12 GAU CK 0080
In the Gauhati High Court
Case No : 451 of 2017

Fakrul Islam

APPELLANT

Vs

The State of Assam & Anr.

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 401](#) - Saving of inherent powers of High Court - High Courts powers of revision
[Indian Penal Code, 1860](#), [1](#)

Citation : (2017) 12 GAU CK 0080

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : HRA Choudhury, IA Hazarika, A Ahmed, N.J. Dutta

Judgement

1. I have heard Mr. A Ahmed, learned counsel representing the petitioner, and Mr. N.J. Dutta, learned Additional Public Prosecutor, representing the State respondent No. 1.

2. After hearing the learned counsel for the parties on perusal of the materials on record, I propose to dispose of this criminal revision petition at the motion stage itself, by this judgment and order.

3. This is a criminal revision petition, filed under Section 401, read with Section 482 of the Cr.P.C., for setting aside the order, dated 18-07-2017, passed by the learned Additional Sessions Judge, No. 1, Nagaon, in Misc. (J) CrI. Case No. 01(N)/2017, rejecting the claim of the juvenility of the present petitioner, Fakrul Islam.

4. The learned Additional Public Prosecutor, during the course of hearing has fairly agreed that there is ground for holding a fresh enquiry in respect of the claim of juvenility by the present petitioner in view of the explanation to the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, "2000 Act") as well as in view of decisions rendered by the

Hon''ble Supreme Court and our own Hon''ble High Court, which are referred to hereinbelow.

5. The fact leading to the case is that an FIR was lodged on 21-04-2000, alleging commission of murder of the deceased by the accused persons. The accused persons, including the present petitioner, were named in the FIR.

6. The learned Additional Sessions Judge, No. 1, Nagaon, vide the judgment and order, dated 29-04-2000, passed in Sessions Case No. 161 (N)/2004, convicted and sentenced the accused persons including the present petitioner to undergo life imprisonment for commission of offence under Section 302 of the IPC and also to pay a fine of Rs. 3000/- with default clause. The criminal appeal preferred before this High Court, against the aforesaid judgment, vide Criminal Appeal No. 162/2013, was dismissed.

7. Although there is no record before this Court as to whether the present accused-petitioner/convict approached the Hon''ble Supreme Court, or not, yet it has come out from the submission of the learned counsel for the petitioner that SLP was moved before the Hon''ble Supreme Court against the judgment and order, dated 21-05-2015, above in the aforesaid appeal was dismissed by the Hon''ble Supreme Court in the year 2016.

8. The learned counsel for the petitioner has submitted that neither in the trial Court, nor in the High Court, in appeal, the plea of juvenility of the present petitioner was taken. It appears from the record produced before this Court that on 03-06-2017, an application was made before the learned Additional Sessions Judge, No. 1, Nagaon, claiming juvenility of the present petitioner. The petition before the learned Additional Sessions Judge, No. 1, Nagaon, claiming juvenility of the present petitioner was filed by his mother Mustt. Hajera Khatun. According to her, the present petitioner was born on 01-01-1984 and he studied upto Class-V in Pachim Gayangaon Balika Muktab at the relevant point of time. The son of the aforesaid petitioner, Hajera Khatun, present petitioner was aged about 16 years, 3 months and 20 days and to substantiate such claim, she produced a school certificate, issued by the Headmaster of the aforesaid school. The school certificate produced, made it appear that the present petitioner was admitted in the said school on 10-02-1990. The aforesaid school was provincialised in the year 1987.

9. The learned Additional Sessions Judge, No. 1, Nagaon, examined the Headmaster of the school, who issued the certificate and rejected the plea of juvenility of the present petitioner on the ground that the basis of recording the age of the present petitioner in the school register is not mentioned either in the school register or in the certificate as well as the fact that the Headmaster did not know the parents of the present petitioner and his exact date of birth. Further ground on which the prayer was rejected is that the Registrar, which the learned Additional Sessions Judge, No. 1, Nagaon examined, on being produced by the Headmaster, there was no seal and signature of Block Elementary

Education Officer or other Elementary Education Officer in charge of inspection of the said school.

10. Now, the question as to whether the plea of juvenility taken after the disposal of the sessions case by the learned trial Court as well as the appeal by the High Court and by the Hon"ble Supreme Court is maintainable.

11. Section 7A in 2001 Act provides that a claim of juvenility may be raised at any stage even after final disposal of the case. The expression "any Court" in Section 7A of the 2000 Act is too wide that there is no bar in raising the issue of juvenility at any stage and any Court and even after disposal of the case. Therefore, the plea is maintainable.

12. The Hon"ble Supreme Court, in para-39.1, 39.2 and 39.3 of *Abuzar Hossain alias Gulam Hossain v. State of West Bengal* reported in (2012) 10 SCC 489, has observed as follows: "39. Now, we summarise the position which is as under: 39.1 A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in appeal court.

39.2 For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3 As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh*² and *Pawan*⁸ these documents were not found prima facie credible while in *Jitendra Singh*¹⁰ the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent."

13. In the instant case, to substantiate the juvenility, a school certificate has

been produced wherein the date of birth is shown to be 01-01-1984, the Headmaster of the school was examined by the learned Additional Sessions Judge, No. 1, Nagaon, to satisfy himself about the genuineness of the certificate and thereafter he rejected the prayer for declaring the present petitioner as juvenile as he did not believe the evidence of the Headmaster as well as the certificate for the reason specifically mentioned in the order itself as indicate above.

14. There is no dispute that the school certificate may be considered for determination of age for the purpose of decision on the plea of juvenility of any accused/juvenile-in-conflict with law. The case at hand is a case where the school certificate is produced although after the trial as well as the appeal was over. But as laid down by the Hon"ble Supreme Court in the decision, referred to above, there is no legal hurdle in deciding the juvenility even if it is raised after the case ended with conviction, meaning thereby, after disposal of the case. That apart, the Division Bench of our Hon"ble High Court in In Reference v. State of Assam & Ors. reported in (2011) 4 GLR 235, has laid down in para-16 of the aforesaid judgment as follows: "16. That section 7A would have to be read in tandem with section 20 of the Act and Rule 98 of the Rules has been authoritatively propounded in Hari Ram(supra). Their Lordships in this rendering succinctly encompassed the pith of the Act in the following paragraphs- " 59. The law as now crystallised on a conjoint reading of Sections 2(k),2(l),&-A,20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. 67. Section 7-A of the Juvenile Justice Act, 2000, made provisions for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. 68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act,2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act. 69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20,which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause(l) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed."

15. That apart, Section 20 of the 2000 Act also makes a special provision in respect of pending cases. The explanation to Section 20 aforesaid reads as

follows: "Explanation.-In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

16. It appears from the explanation of Section 20, referred to above, that the provisions of this 2000 Act is applicable in respect of pending cases also meaning thereby that the 2000 Act has applicability in the instant case also as it was pending before the Act came into force. Therefore, the right of the present petitioner to raise the plea of juvenility is supported by the provisions of the Act itself as well as the decisions referred to above.

17. On perusal of the impugned order, it is not found that the learned Additional Sessions Judge, No. 1, Nagaon, was guided by the principle laid down by the Hon"ble Supreme Court in para-39.3 and 39.5 quoted to above.

18. It deserves mention here that Section 35 of the Evidence Act is also not found to have been taken into consideration by the learned Additional Sessions Judge, No. 1, Nagaon, as it appears from the impugned order, which, according to this Court is relevant for the purpose of the issue involved and which has also been referred to by the Hon"ble Supreme Court in the case of Ravinder Singh Corkhi v. State of U.P., reported in (2006) 5 SCC 584, in paragraph 16, 17, 35 and 38, which reads as follows: "16. The purported school leaving certificate was sought to be proved by Chandra Pal Singh, Head Master of the Primary Pathshala, Hajratpur. In his cross-examination, he categorically stated that the date of birth of the appellant might have been disclosed by the appellant at the time of admission. He did not have any personal knowledge with regard thereto. No enquiry was made as regards the age of the appellant while he was admitted in the institution. He accepted that it was quite possible that the age disclosed by the guardian may be more or less.

17. The school leaving certificate was said to have been issued in the year 1998. A bare perusal of the said certificate would show that the appellant was said to have been admitted on 01.08.1967 and his name was struck off from the roll of the institution on 06.05.1972. The said school leaving certificate was not issued in ordinary course of business of the school There is nothing on record to show that the said date of birth was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Indian Evidence Act. No statement has further been made by the said Head Master that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school leaving certificate, evidently had been prepared for the purpose of the case. All the necessary columns were filled up including the character of the appellant. It was not the case of the said Head

Master that before he had made entries in the register, age was verified. If any register in regular course of business was maintained in the school; there was no reason as to why the same had not been produced.

35. We have not been shown as to whether any register was required to be maintained under any statute. We have further not been shown as to whether any register was maintained in the school at all. The original register has not been produced. The authenticity of the said register, if produced, could have been looked into. No person had been examined to prove as to who had made entries in the register. The school leaving certificate which was not issued by a person who was in the school at the time when the appellant was admitted therein, cannot be relied upon.

38. The age of a person as recorded in the school register or otherwise may be used for various purposes; namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum, e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

19. On perusal of the judgment, particularly, paragraphs-16, 17, 35 and 38, this Court is of the view that the plea of present petitioner in respect of his juvenility can be looked into as per the guidelines of the Hon"ble Supreme Court in the aforesaid paragraphs of the judgment.

20. That being so, the decision of the learned Additional Sessions Judge, No. 1, Nagaon needs to be set aside with a direction that he will hold a fresh enquiry in the light of the decisions referred to above, keeping in mind the provision of Section 7A and Section 20 of the 2000 Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

21. In view of above, the order, dated 18-07-2017, passed by the learned Additional Sessions Judge, No. 1, Nagaon, in Misc. (J) CrI. Case No. 01(N)/2017, is set aside. The learned Additional Sessions Judge, No. 1, Nagaon, shall dispose of the plea of juvenility of the present petitioner afresh taking into consideration the law laid down by the Hon"ble Supreme Court and Hon"ble High Court,

referred to above, and the provisions of the 2000 Act, specifically mentioned above, within 2 months from today.

22. With the above observations and directions this criminal revision petition stands disposed of.