
(2009) 07 AHC CK 0026
In the Allahabad High Court
Case No : Criminal R. No. 3241 of 2008

Jai Nand Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 5(3)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12(3)
Penal Code, 1860 (IPC) — Section 302, 323, 504, 506

Citation : (2009) 3 ACR 3154

Hon'ble Judges : Kashi Nath Pandey, J

Bench : Single Bench

Advocate : Sunil Vashisth, for the Appellant; Vivek Kumar Singh and Ajay Kumar Singh and A.G.A., for the Respondent

Judgement

Kashi Nath Pandey, J.—This criminal revision has been filed against order dated 14.11.2008 passed by Additional Sessions Judge, Court No. 10, Meerut in Criminal Appeal No. 228 of 2008, Jai Nand Sharma v. State of U.P. Criminal Appeal No. 228 of 2008, by which the appeal has been dismissed against the order dated 12.8.2008, passed by Juvenile Justice Board, Meerut in Misc. Case No. 308 of 2008 by which it has been declared that the opposite party No. 2, Amit Kumar and opposite party No. 3, Ankit Kumar were juvenile at the time, the offence under Sections 302, 323, 504 and 506, I.P.C. Crime No. 176 of 2008, P.S. Bhawanpur, district Meerut was committed.

2. I have heard the learned Counsel for the revisionist and learned Counsel for the opposite parties.

3. I have gone through the impugned order of Principal Magistrate, Juvenile Justice Board and First Appellate Court. There is concurrent finding on point of fact by both the courts below, therefore, it is not expected from the revisional court to interfere into the findings of fact, unless and until the finding is perverse, i.e., against the evidence in record. The revisional court can also

interfere, if there is any error of substantive law or of procedural law.

I have perused the grounds of revision. It has been asserted that to arrive at a true conclusion on point of age, they should be subjected to medical examination, but both the Courts have ignored it. The accused were not medically examined to ascertain their age. It has also been mentioned that normally parents do not tell correct date of birth of their children showing their lesser age so that in future they may get advantage in services or examination. Learned lower court did not appreciate the document filed by the revisionist in their true prospects. The voter list and pariwar register show that the date of birth of the opposite party Nos. 2 and 3 is in the year 1988 and 1990 showing them to be major at the time of the incident. Lower court failed to appreciate the statement of the village panchayat adhikari. Both the courts below erred in law by not subjecting the accused persons for medical examination to ascertain their age.

4. After perusal of the above grounds of the revision, it is apparent that the order has not been challenged on grounds of error of procedural or substantive law. The order has been challenged on the grounds of fact. It has not been mentioned that the conclusion drawn by the learned lower court and first appellate court is perverse, i.e., against the evidence in record. In above circumstances, it is beyond the scope of the revisional court to interfere in finding of fact recorded by the Juvenile Justice Board as well as Additional Sessions Judge.

5. I have gone through the order passed by Juvenile Justice Board. The learned lower court has relied on the statement of Satpal, the father of juvenile offender who has stated that the date of birth of Amit is 19.6.1991 and of Ankit is 22.4.1994. The parents are the best witness regarding the date of birth of their children, therefore, due importance should be given to their statement which has been done by the learned lower court. Against above statement the learned Juvenile Justice Board was justified in giving less importance to the entry of age in electoral roll and family register. There is overwriting in family register which does not bear initial of the concerned authority. There is no serial number in the register. It has been stated by the witness that actual date of birth is not mentioned in this register, but it is probable date of birth. Therefore the learned Magistrate was justified in not accepting the age mentioned in the electoral roll and the family register. The learned lower court has also mentioned *Mayank Rajput Vs. State of U.P.*, in which Hon'ble Supreme Court has held that age mentioned in the electoral roll cannot be a definite evidence as influential leader of the locality attempts to get more and more numbers of their voters who are in their favour. The learned Magistrate has relied on the entry of their date of birth in High School Certificate in which the date of birth of Amit Kumar son of Satpal has been written to 19.6.91. He has also considered the mark sheet of class 5th of Ankit Kumar issued by Nav Jyoti Public School, mark sheet of class 9th issued by N.A.S. Inter College and certificate issued by Nitu Bal Academy Junior High School, Abdullahpur, Meerut in which date of birth of Ankit has been mentioned

as 22.4.1994 which has been supported by statement of C.W. 2 Balestar Singh who has stated that at serial No. 15 of S.R. Register name of Ankit Kumar son of Satpal has been entered whose date of birth has been written to be 22.4.1994. All above documents have been supported by the oral evidence of their father, Satpal. Therefore it cannot be said that on point of age the conclusion drawn by the learned Juvenile Justice Board is against the evidence in record.

6. I have also gone through the judgment passed by Additional Sessions Judge, Court No. 10, Meerut. It has been argued that the order has not been signed by all the members of the Juvenile Justice Board but it has been made clear in Juvenile Justice (Care and Protection of Children) Act, 2000 u/s 5(3) a Board may act notwithstanding, the absence of member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings. Therefore if the order has been signed only by Principal Magistrate, it cannot be said to be illegal. Learned Counsel for the revisionist argued that if all the members are present, it is mandatory on their part to make their signature. Above provision is for those circumstances when other members are not present but this can be said maximum to be irregularity not illegality. Learned Counsel for the revisionist argued that where the documentary evidence was contradictory with each other, it was expected from the Juvenile Justice Board to send the juvenile for medical test on point of age, but even on this point the order of the learned Sessions Judge is well explained according to Rule 12 (3) of Juvenile Justice (Care and Protection of Children) Rules, 2007: "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 certificate 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 the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board.

7. Thus, the first priority for determination of age of a juvenile will be given to the date of birth in High School certificate. If there is no High School Certificate, the date of birth certificate from the school first attended and even in absence of both the birth certificate given by a corporation or municipal authority is expected. In absence of all the above three, the medical opinion will be sought from a duly constituted medical board. In above circumstances when there were documentary evidence of High School Certificate and certificate from the school first attended supported by oral evidence of father, there was no need for the Juvenile Justice Board to direct for the medical examination of the juvenile for

determination of age. Learned Counsel for the revisionist has cited Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, and argued that in actual life it often happens that parents tell lesser age of their children at the time of school admission. It shall not be accepted if it is alleged that the entry was made upon false information supplied with some ulterior motive. The burden of proof is upon that person who has challenged the entry, therefore from above ruling, the present position after the Rules, 2007 Juvenile Justice (Care and Protection of Children) Act cannot be ignored. Learned Counsel for the revisionist has also cited Shiv Shankar v. State of U.P. XL 2000 ACC 571 and argued that if there were conflicting evidence on record regarding age none can be relied upon, hence medical evidence should be relied upon, but this is not in accordance with the latest provision mentioned in Rule 12 (3) of U.P. Juvenile Justice (Care and Protection of Children) Rules, 2007, in Mayank Rajput Vs. State of U.P., entry made in High School certificate was presumed to be correct. The burden lies on either side to prove it otherwise for determination of age. Entries in electoral roll about age mentioned therein was not treated as conclusive piece of evidence. In Dal Chand v. State of U.P. XLVI 2003 ACC 382: 2003 (1) ACR 634, it has been held that hyper technical view should not be adopted for determination of age of juvenile, where two views are possible court should lean in favour of the accused to be juvenile in borderline cases, school certificate may be considered as important evidence. Report of C.M.O. cannot override school certificate and specially the statement of the mother of the accused. In Bhoop Ram v. State of U.P. XXVI 1989 ACC 285: 1989 ACR 276 (SC), school certificate was given more importance. In Fanu alias Irfan v. State of Uttar Pradesh XXXIII 1996 ACC 690: 1996 ACR 505, school certificate was given more importance.

8. Considering all above circumstances, the order passed by the Magistrate is based on evidence in record. There is no any error of procedure or of substantive law. Therefore no reason to interfere with the findings of fact on point of age of the juvenile, accordingly the revision is hereby dismissed.