
(2015) 03 GUJ CK 0064

In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 746 of 2015

Jayesh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 35
Gujarat Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2015) 03 GUJ CK 0064

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

**Advocate : Ashish M. Dagli, for the Appellant; Reeta Chandarana, APP,
Advocates for the Respondent**

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By this application under Article 227 of the Constitution of India, the applicant-original accused calls in question the legality and validity of the order dated 23 January, 2015 passed by the learned 4th Additional Sessions Judge, Junagadh in Criminal Revision Application No. 111 of 2014 by which the Revisional Court rejected the Revision Application filed by the applicant herein, thereby affirming the order dated 20th December, 2014 passed by the learned Judicial Magistrate First Class, Junagadh below Exhibit-8 in the Criminal Case No. 2329 of 2014.

2. The facts giving rise to this application may be summarized as under:-

2.1 A first Information Report came to be registered before the Junagadh "A" Division Police Station vide C.R. No. I-81 of 2014 of the offence punishable under Sections 302, 147, 148, 149 read with Section 34 of the Indian Penal Code and also under Section 135 of the Gujarat Police Act.

3. The applicant herein has been named in the F.I.R. as one of the accused persons along with the others. He was arrested on 16th June, 2014 and was produced before the Court of the learned Magistrate on the very same day and was taken on Police remand up to 19th June, 2014. Thereafter, he was remanded to the judicial custody.

4. On 20th November, 2014, he filed an application Exhibit-8 before the learned Additional Chief Judicial Magistrate, Junagadh stating that on the date of the commission of the offence he was a juvenile and therefore it would be the juvenile Court, who would be competent to try him for the alleged offence. The claim of the applicant that he is a juvenile is based on a School Leaving Certificate issued by Shri Sakti Primary School, Junagadh in which the date of birth is shown as 16th May, 1996.

5. The learned Judicial Magistrate First Class, Junagadh took into consideration two things, one, the School Leaving Certificate was not found to be a reliable document because in the School Leaving Certificate the last school attended is shown to be a Kanyashala No. 4, Junagadh. Therefore, according to the learned Magistrate the applicant could not have studied in a girls school. This circumstance led the learned Magistrate to believe that no reliance could be placed on such a document, second, the ossification test conducted by the Medical Officer at the Civil Hospital, Junagadh indicates the age of the applicant to be between 18 and 20 years. The learned Magistrate observed in the order that the applicant has been charged with a very serious offence of robbery and the trial Court has also framed charge in the matter and therefore the application was liable to be rejected.

6. Being dissatisfied, the applicant filed a Criminal Revision Application No. 111 of 2014 before the Sessions Court at Junagadh.

7. The Additional Sessions Judge confirmed the findings recorded by the learned Magistrate and accordingly rejected the Revision Application.

8. Being dissatisfied, the applicant has come up with the present application.

9. Mr. Ashish M. Dagli, the learned advocate appearing for the applicant vehemently submitted that the courts below have committed a serious error in passing the impugned orders. He submitted that there was no reason for the courts below to doubt the genuineness of the School Leaving Certificate which indicates that the applicant was a juvenile on the date of the commission of the offence. He submitted that the courts below should not have placed reliance on the ossification test because it is not a conclusive test so far as the age of a person is concerned. In the ossification test report if it has been stated that the age of the accused could be between 18 and 20 years then he could be of 16 years of age or could be 22 years of age. There is always a margin of error by two years on both the sides. He submitted that both the orders deserve to be quashed and the application Exhibit-8 filed in the Court of the learned Magistrate be allowed.

10. This application has been vehemently opposed by Ms. Reeta Chandarana, the learned APP appearing for the State. She submitted that the Courts below committed no error, not to speak of any error of law in passing the impugned orders. She submitted that the scope of interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution is very limited and even if there is any error of law, the same may not be sufficient to interfere.

11. In such circumstances referred to above Ms. Chandarana submits that there being no merit in this application the same be rejected.

12. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the courts below committed any error in passing the impugned orders.

13. Before considering the merits and the claim of the applicant and the stance of the state, let me look into the relevant provisions of the Act as well as the Rules as regards the procedure to be followed in determine of age.

14. The provisions of 1986 and 2000 Acts as well as of the Juvenile Justice Care and Protection of Children (Rules 2007) and also the relevant parts of the Section 2(h) of the 1986 Act, Sections 2(I), 7, 7(A), 20 and 49 of the 2000 Act and Rule 12 of the Rules 2007 are being reproduced as under:-

"1986 Act

Section 2(h) "Juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

2000 Act Section 2(I)

"Juvenile in conflict with law "means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence".

Section 7. Procedure to be followed by a Magistrate not empowered under Act. - (1) When any Magistrate no empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceedings.

(2) The competent authority to which the proceeding is forwarded under subsection (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it:

Section 7-A. Procedure to be followed when claim of juvenility is raised before any court. - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused persons was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence

as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the courts finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

Section 20. Special provision in respect of pending cases.-Notwithstanding anything contained in this Act, all proceeding in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that Juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act a juvenile has committed the offence.

Section 49.Presumption and determination of age. - (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority 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.

Rule 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 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 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), (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."

[12] It is pertinent to mention that 2000 Act has come into force w.e.f. 1.4.2001 and considerable amendments were made therein by Amendment Act 33 of 2006 w.e.f. 22.08.2006 while the rules were framed and enforced in 2007."

15. It is manifest from the above provisions that the Court before whom an accused person raises a plea of his being a juvenile on the date of Commission of offence, the Court is competent to conduct an inquiry and in course of such enquiry, the Court can take such evidence as may be necessary in order to determine the age of such person. When a question is raised before any court that the accused is or was a juvenile on the date of offence, that Court has to itself hold an enquiry to be satisfied prima facie that the person concerned is or was a juvenile on the date of the offence. The claim of juvenility can be raised before any Court and it shall be recognized at any stage of the proceeding. Such claim shall be determined in terms of the provisions contained in this Act and Rules there under even if the juvenile ceases to be so on or before the date of the commencement of this Act. It is only when the Court finds the person to be juvenile on the date of commission of the offence after conducting inquiry it shall forward the juvenile to the Board for passing appropriate order.

A bare reading of the Rules would indicate that the primary evidence which the competent authority should consider first is the birth certificate issued by a corporation or a municipal authority or a date of birth certificate from the school first attended or matriculation or equivalent certificates, if available. It is only in absence of any of the documents described above, that the competent authority may seek for medical opinion regarding the age of the accused. It is to be noted that an inquiry is necessary to ascertain the age of the accused on the date of commission of the offences.

16. In the light of the above procedure to be followed in determining the age of the child or juvenile, I may now look into the various decisions of the Supreme Court.

17. In *Raju and Another Vs. State of Haryana*, , the Supreme Court had admitted "mark-sheet" as one of the proofs in determining the age of the accused person. In that case, the appellants therein Raju and Mangli along with Anil alias Balli and Sucha Singh were sent up for trial for allegedly having committed an offence punishable under Section 302 read with Section 34 of the I.P.C. Accused Sucha Singh was found to be a juvenile and his case was separated for separate trial under the Act. Others were convicted under Section 302 read with Section 34 of the I.P.C. and were sentenced to imprisonment for life and to pay a fine of Rs. 5,000/-. Apart from contending on the merits of the prosecution case, insofar as appellant No. 1, that is on 31-3-1994, he was a juvenile and as per his mark-sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Learned Counsel submitted that having regard to the recent decision of the Supreme Court in *Hari Ram Vs. State of Rajasthan and Another*, , appellant No. 1 must be held to have been a minor on the date of the incident and the provisions of the Act would apply in his case. Learned Counsel further contended that the appellant No. 1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case. On merits, while accepting the claim of the learned counsel for accused-appellant, the Supreme Court altered the conviction and sentence and convicted under Section 304 Part I read with Section 34 I.P.C. instead of Section 302 read with Section 34 I.P.C. As far as appellant No. 1, namely, Raju was concerned, while accepting the entry relating to date of birth in the mark-sheet, referred his case to the Board in terms of Section 20 of the Act to be dealt under the provisions of the said Act in keeping with the provision of one of the proofs for determining the age of an accused person.

18. Similarly, the Supreme Court has treated the date of birth in the School Leaving Certificate as a valid proof in determining the age of an accused person. IN *Bhoop Ram Vs. State of U.P.*, , the Supreme Court considered whether the appellant therein was entitled lesser imprisonment than imprisonment for life and should have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 (1 of 1952). The following conclusion in Para 7 is relevant

which reads as under:

"7....The first is that the appellant has produced a school certificate which carries the date 24-6-1960 against the column "date of birth". There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars....."

It is clear from the above decision that this Court relief on the entry made in the column "date of birth" in the School Leaving Certificate.

19. In *Rajinder Chandra Vs. State of Chhattisgarh and Another*, , the Supreme Court once again considered the entry relating to the date of birth in the mark-sheet and concluded as under:

"5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he less than 16 years by a few months only In *Arnit Das Vs. State of Bihar*, , the Supreme Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court, squarely applies to the facts of the present case." 20. In *Arnit Das Vs. State of Bihar*, , the Supreme Court held that while dealing with a question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views may be possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases.

21. In *Ravinder Singh Gorkhi Vs. State of U.P.*, , with regard to the entries made in School Leaving Certificate, the Supreme Court has observed as under:

"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 1-8-1967 and his name was struck off from the roll of the institution on 6-5-1972. The said school-leaving certificate was not issued in the 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 Evidence Act. No statement has further been made by the said Headmaster 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

Headmaster that before he had made entries in the register, age was verified. It 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." 22. In Pradeep Kumar, Krishan Kant and Jagdish Vs. State of U.P., , the Supreme Court considered the commission of offence by persons below 16 years of age. The question before a three-Judge Bench was whether each of the appellants in those appeals was a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and as such on conviction under Section 302 read with Section 34 I.P.C. should have been sent to an approved school for detention till the age of 18 years. At the time of granting the special leave, the appellant, by name, Jagdish Produced High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant -- Krishan Kant produced horoscope which showed that he was 13 years of age at the time of occurrence. So far as appellant -- Pradeep was concerned, a medical report was called for by the Supreme Court which disclosed that his date of birth as 7-1-1959 was acceptable on the basis of the various tests conducted by the medical authorities. In the above factual scenario/details, the Supreme Court concluded as under:

"3. It is thus proved to the satisfaction of this Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Sections 302/34 of the Act."

After saying so and after finding that the appellants were aged more than 30 years, this Court directed not to send them to an approved school under the U.P. Children Act for detention, while sustaining the conviction of the appellants under all the charges framed against them, quashed the sentences awarded to them and ordered their release forthwith.

13. The applicability of the Act and the Rules in respect of "Juvenile" and "Juvenile in conflict with law" have been elaborately considered by this Court in Hari Ram (Supra). After analysing the Scheme of the Act and various Rules including Rule 12 and earlier decisions of this Court laid down various principles to be followed. After applying those principles and finding that the appellant therein was 16 years of age on the date of the commission of the alleged offence and had not been completed 18 years of age, remitted the matter to the Board for disposal in accordance with law."

23. In the instant case, it appears that the applicant did produce a School Leaving Certificate issued by the School Authority on 20th November, 2014. As held by the Supreme Court in the case of Shah Nawaz Vs. State of U.P. and Another, that the School Leaving Certificate is also a valid proof in determining the age of the accused persons. The Rule 12 of the Rules referred to above, which was brought in pursuance of the Act describes the four categories of evidence which have been provided in which preference has been given to the School Certificate over the Medical Report. The only reason the courts below have doubted the genuineness of the School Leaving Certificate is the fact that in

the said certificate the last school attended is shown to be a girls school. In this regard Ms. Chandarana the learned APP drew my attention to the fact that one shree G.L. Makwana, the Police Sub Inspector of the "A" Division Police Station, Junagadh personally inquired into the matter and confirmed that although the name of the school is "Kanyashala No. 4" yet the same is not exclusively a girls school. Even the boys study in that particular school. She further pointed out that the Police Officer personally inquired with the School Authority, who has issued the School Leaving Certificate and contents of the said certificate were found to be correct. Mr. Makwana, the Police Officer was personally present at the time of the hearing of this application and he confirmed about the same.

24. In such circumstances, the refusal of the courts below to accept the School Leaving Certificate as the primary evidence of the applicant's age and calling for the medical opinion could be said against the procedure laid down in the Rules. It is well settled that the medical opinion does not give an accurate assessment of the age of the person and therefore, the School Leaving Certificate issued by the school, gains greater and superior importance and reliability, where no doubt is cast against its genuineness.

25. In the result, this application is allowed. The impugned order dated 23rd January, 2015, passed by the learned 4th Additional Sessions Judge, Junagadh is hereby quashed and set aside. The order dated 20th December, 2014 passed by the learned Magistrate below Exhibit-8 is also hereby quashed and set aside. It is held that the birth date of the applicant is 26th May, 1998, and therefore, his age on the date of the commission of the alleged offence i.e. 26th May 1998 was about 16 and half years and was a juvenile as defined under Section 2(k) of the Act.

26. In such circumstance, the Sessions Court has no jurisdiction to try the offence charged against the applicant accused. The trial Court shall forthwith make necessary arrangements to get the applicant accused released from the jail if he is still in custody and to produce him before the concerned board so as to enable the board to take further actions in accordance with the provisions of the Act with regard to the trial of the offence charged against him. Rule is made absolute accordingly.