
(2005) 08 JH CK 0058

In the Jharkhand High Court

Case No : Criminal Revision No. 786 of 2004

Kameshwar Prajapati

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 49
Penal Code, 1860 (IPC) — Section 120B, 302, 34, 494

Citation : (2006) CriLJ 773 : (2006) 1 Crimes 255 : (2006) 1 RCR(Criminal) 491 : (2005) 3 JLJR 776 : (2005) 4 JCR 291 : (2005) AIR Jhar HCR 2487 : (2006) 1 ALT(Cri) 22

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; APP, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The petitioner, who was named in the FIR as an accused in connection with Sonahatu P.S. Case No. 27 of 2003 registered under Sections 302: 494/34/120-B of the Indian Penal Code has filed this revision application challenging the order dated 22.7.2004 passed by the Additional Chief Judicial Magistrate, Khunti, in Sessions. Trial No. 600/2003, rejecting the claim of the petitioner for declaring him to be a juvenile under the Juvenile Justice Care and Protection Act, 2000.

3. According to the FIR the allegations as it appears, are that the daughter of the informant namely, Babita Kumari was forced to get married with the other co-accused Kamla Kant Prajapati, who was allegedly already a married man and was having two children. In spite of the fact that his wife was alive, the accused Kamla Kant Prajapati got married with the daughter of the informant. It was further alleged that the deceased-daughter of the informant lived with the accused Kamla Kant from 7.7.2003 to 13.7.2003. On 14.7.2003 at about 5.30 a.m. Kamla Kant came to Duman Prajapati and told that his second wife Babita

was calling them, thereafter, they went to Babita's house where they saw smoke coming out from her house and then the police was informed. The girl Babita was found dead in the house of Kamla Kant Prajapati. Accordingly, the FIR was lodged for the offence under Sections 302: 494/34/120-B of the Indian Penal Code against Kamla Kant Prajapati and his family members including his brother, i.e. the petitioner.

4. The case was committed to Court of Sessions. A petition was filed before the trial Court by the petitioner Kameshwar Prajapati that he was a juvenile as defined under the Juvenile Justice Care and Protection Act, 2000, because his date of birth as per the School Leaving Certificate was 1.2.1987 and, therefore, on the alleged date of occurrence he was only 16 years of age. Accordingly, the case record of the petitioner was split up and the case was sent to the Court of the Additional Chief Judicial Magistrate, Khunti for enquiry and trial of the petitioner under the provisions of Juvenile Justice Care and Protection Act, 2000.

5. The learned Additional Chief Judicial Magistrate, Khunti made enquiry as provided u/s 49 of the Juvenile Justice Care and Protection Act, 2000 by taking evidence and then by the impugned order held that the petitioner was about 21 years of age as per the report of the Medical Board and, therefore, was not a juvenile. Being aggrieved by the said order the petitioner has filed this revision application.

6. The petitioner has filed School Leaving Certificate, from which it appears that he passed matriculation examination in the year 2002. In the said certificate wherein his date of birth was entered as 1.2.1987. Even the mark sheet issued by the Jharkhand Secondary Examination Board shows the date of birth of the petitioner to be 1.2.1987.

7. This Court in the case of Prem Chand Sao Alias Jhari Sao v. State of Jharkhand and Ors., reported in 2002 (3) JCR 581 (Jhr) : 2003 (1) JLJR 78, has held that the School Leaving Certificate is the best evidence of date of birth and the medical opinion regarding age which is based on estimate will not prevail over evidence of age as per entry in school certificate.

Therefore, it appears that the present case is fully covered by the aforesaid decision of this Court. It is not disputed that the date of birth of the petitioner has been shown as 1.2.1987 in the School Leaving Certificate, from where he appeared and passed matriculation examination.

8. Therefore, in my view, the learned Additional Chief Judicial Magistrate, Khunti committed error in refusing to rely on the School Leaving Certificate of the petitioner and thereby rejecting the prayer for declaring the petitioner to be juvenile.

9. Accordingly, this application is allowed. The impugned order dated 22.7.2004 passed by the Additional Chief Judicial Magistrate, Khunti is hereby set aside, the petitioner is declared to be juvenile and, accordingly, the Court below is directed

to proceed with the case in accordance with law.