

(2013) 02 AHC CK 0114
In the Allahabad High Court
Case No : Criminal Revision No. 501 of 2013

Kumari Ranjana Yadav

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 53, 6, 64, 7A

Penal Code, 1860 (IPC) — Section 376, 506

Citation : (2013) 3 ACR 3536 : (2013) 3 ADJ 673 : (2013) 4 ALJ 40 : (2013) 82 ALLCC 188

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : R.P. Dubey, for the Appellant; Manish Tiwary and A.K. Awasthi, for the Respondent

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Parcha filed by Sri Manish Tiwary and Sri A.K. Awasthi on behalf of opposite party No. 2 is taken on record.

This revision u/s 397 /401 Cr.P.C. read with Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as the "Act") is directed against the order dated 18.2.2013 passed by Additional Sessions Judge, Court No. 2, Varanasi in Criminal Misc. Bail Application No. 2213 of 2012 arising out of crime No. 233 of 2012 under Sections 376 and 506 IPC, P.S. Lohata, District - Varanasi, whereby the opposite party No. 2 - Santosh Kumar @ Pakalu was declared to be a juvenile in conflict with law and bail application was referred to Juvenile Justice Board, Varanasi for disposal.

Heard Sri R.P. Dubey, learned counsel for the revisionist, learned A.G.A. for the State, Sri Manish Tiwary, learned counsel for opposite party No. 2 and perused the material available on record.

Opposite party No. 2 is an accused in the aforesaid case. An application for bail was moved by him before the Sessions Judge, Varanasi, which was transferred to Additional Sessions Judge, Court No. 2, Varanasi for disposal. During hearing of the bail application, a plea was raised on behalf of the opposite party No. 2 that he was a juvenile and his date of birth as recorded in the High School Certificate is 21.10.1994 and, therefore, on the date of incident i.e. on 13.7.2012, his age is about 17 years, 8 month and 22 days. The plea was opposed by learned counsel for the complainant-revisionist on the ground that according to the High School Certificate, the date of birth of Sunita Yadav, elder sister of opposite party No. 2 was 8.8.1994 and, therefore, brother and sister could not have born within a span of three months and 13 days and, therefore, date of birth recorded in the High School Certificate was not reliable. It was also contended that earlier, an application for declaring the accused as juvenile was moved before the Magistrate, which was subsequently not pressed.

2. Learned Additional Sessions Judge relied upon Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007 (here-in-after referred to as the "Rules") and came to the conclusion that the date of birth recorded in the High School Certificate is conclusive and accordingly opposite party No. 2 was declared to be a juvenile in conflict with law. Feeling aggrieved, the complainant has come up before this Court in this revision.

3. It is submitted by learned counsel for the complainant-revisionist that no application was moved on behalf of opposite party No. 2 before the learned Additional Sessions Judge for declaring him to be a juvenile and, therefore, learned Additional Sessions Judge was not justified in holding an inquiry u/s 7A of the Act. It was further submitted that even if the plea of juvenility of opposite party No. 2 was raised before learned Additional Sessions Judge at the time of hearing of the bail application, learned Additional Sessions Judge should have made an inquiry as contemplated by Section 7A of the Act and should have gone deeper into the evidence and opportunity of hearing by leading evidence should have been provided to the complainant, the State as well as the accused but no such action was taken by the Court below.

Learned AGA supports the contention raised by learned counsel for the revisionist.

4. Per contra, learned counsel for the opposite party No. 2 submitted that learned Additional Sessions Judge has not committed any illegality in declaring the opposite party No. 2 as juvenile on the basis of his High school Certificate. It was contended that date of birth recorded in the High School Certificate of sister of opposite party No. 2 is wrong and proper steps for its correction are being taken.

Section 7A of the Act provides as under:

7A. 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 person was a juvenile on the date of commission of the

offence, the Court shall make an inquiry, 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 recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in 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 Court 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.

It is apparent from the aforesaid provisions that whenever the claim of juvenility is raised before any Court, the Court is bound to make an inquiry and to take all such evidence as may be necessary so as to determine the age of the accused on the date of crime.

In the instance case, no thorough enquiry was held by learned Additional Sessions Judge. No opportunity was given to the revisionist and the State to lead evidence against the claim of opposite party No. 2 claiming juvenility. When there was two conflicting High School Certificates before the learned Additional Sessions Judge showing a period of two and a half months between the date of birth of opposite party No. 2 and his elder sister, it was incumbent on learned Additional Sessions Judge to hold proper inquiry and summon the records of the High School Board and to take all other evidence to come to the conclusion as to which of the two certificates was genuine or reliable. No such exercise was taken by learned Additional Sessions Judge.

5. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the "Rules 2007") provides as follows:

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 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) 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 of 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.

It is thus clear that the matriculation or equivalent certificate, if available, is the best evidence on the basis of which it can be decided as to whether the revisionist was a juvenile or not and in the absence of matriculation or equivalent certificate, the date of birth certificate from the school first attended or the birth certificate given by the Corporation or Municipal Authority or Panchayat could

have been relied upon. In the absence of above three certificates, the medical evidence has to be relied upon. It is thus obvious that if matriculation or equivalent certificate is available, then other evidence is not required.

In the instant case, no proper inquiry was held by learned Additional Sessions Judge. Neither any opportunity was provided to the revisionist or the State to lead oral and documentary evidence. The factum regarding date of birth of sister of opposite party No. 2 was also not considered. No doubt, according to Rule 12, High School Certificate is prima facie evidence of date of birth of a person but if such circumstances as aforesaid are brought to the notice of the Court, which raise suspicion regarding genuineness of the documents, it is necessary that inquiry must be held without great care and caution.

In these circumstances, the impugned order cannot be sustained and is liable to be set-aside.

The revision is allowed. The impugned order dated 18.2.2013 passed by learned Additional Sessions Judge, Court No. 2, Varanasi declaring the opposite party No. 2 - Santosh Kumar @ Pakalu as juvenile is set aside. Since the matter is now pending before Juvenile Justice Board, Juvenile Justice Board is directed to hold an inquiry u/s 6 of the Act read with Rule 12 of Rules, 2007 to find out whether opposite party No. 2 is infact a juvenile or not and claim of opposite party No. 2 regarding his juvenility shall be decided by the Board in accordance with law after affording sufficient opportunity to the accused, the State as well as the complainant.