
(2011) 11 DEL CK 0078

In the Delhi High Court

Case No : Criminal A. 152 of 2005, Criminal M.A. 10880 of 2011

Raju Chakravarthy

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12, 19
Juvenile Justice Act, 1986 — Section 14, 15, 15(1), 18, 2
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 1 ILR Delhi 638

Hon'ble Judges : S. Ravindra Bhat, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Rakhi Dubey, for the Appellant; M.N. Dudeja, APP., for the Respondent

Judgement

Mr. Justice S. Ravindra Bhat

1. The appellant had preferred a Bail Application, CrI. M. (Bail) 278/2009 in which he claimed inter alia that he was a juvenile on the date of commission of the offence. The Court had, therefore, ordered an enquiry u/s 7-A of the Juvenile Justice Act, into this aspect. After lapse of almost two years, when the matter was taken-up, the Court noticed that the progress of enquiry was very slow and accordingly directed the appellant to be enlarged on bail by its order dated 28.07.2011 (in CrI. M. (Bail) 278/2009). The applicant was unable to furnish reduced surety for the sum of Rs. 2500/- and moved CrI. M.A. 10880/2011. In the meanwhile, pursuant to the previous directions, the Court received the report of the enquiry by the Trial Court dated 24.09.2011.

2. The Appellant, along with a co-accused, was convicted for committing the offence punishable u/s 302/34 IPC, by the impugned judgment, dated 27-9-2004. We have considered the same and heard counsel for the parties.

3. The Appellant contended that he was a juvenile, being about 14 years at the time of commission of the offence. On the basis of his averments, and

submissions made on his behalf, the Trial Court directed investigation, to enquire into the truth of such an assertion; accordingly, a team of the Delhi Police visited District Purab Midnapore in West Bengal. The material gathered, in the form of CW-1, and inspector in the Delhi Police's statement- corroborated by a certificate from the Principal of the local village school is to the effect that according to the contemporaneous school records, the Appellant's date of birth was 10-07-1987. As far as the medical opinion is concerned, the certificate issued by the medical authorities, in this case, reveals that as on the date of his examination, the Appellant's bone age indicated that he was between 25 and 40 years. Considering these materials, the Trial Court formed the opinion - to base its report, that the Appellant was 13 years, 5 months and 12 days on the date of the offence.

4. Learned APP did not seriously dispute the inferences drawn in the report. He faintly argued that the ossification test, which led to the bone age report, revealed that the Appellant was more than 25 years. It would be relevant at this stage to consider Rule 12 of the Juvenile Justice (Care and Protection) Rules, 2007, which reads 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.

It is apparent from the scheme of the above rule that all specified methods of age determination have to be first explored; it is only after they are exhausted that the Board of court has to fall back on the medical opinion given in that regard. Having regard to the structure of the rule, therefore, the court has to first see if other primary evidence is available. In this case, Ex. P.W. -CW1/A the statement of SI Laxmi Chand, who went to Village Jikarapara, P.O. Pratapdighi, District Purba Midnapur, West Bengal, the date of birth of the Appellant was 10-07-1987; the statement of the Principal, of the school where the appellant was admitted has also been produced. In view of this, the ossification test reports furnished to this court are not of much value. Nevertheless, that record too, in this court's opinion, lends assurance that the Appellant was a juvenile, on the date of the offence, viz. 22/23-12-2000; he would have been approximately over 14 years then. In view of these facts, the court finds no force in the submissions of the prosecution; the bone age was determined, on examination, conducted on 06-09-2011 was 25-40 years. According to the school record - the document furnished to this court by the Trial Court along with its report shows that the Appellant's age on the date of the incident (22/23-12-2000) was 13 years, 5 months and 12 days.

5. At this stage, it would be necessary to note that the Act is a complete Code, prescribing a special procedure, and an entirely different set of standards to be adopted for juveniles (defined as those who have not completed 18 years of age, by Section 2(k)) "in conflict" with law (i.e. a juvenile alleged to have committed an offence, by Section 2(l)). By Section 6(1) the Juvenile Justice Board is entitled to exclusively deal with all matters, including enquiry into allegations of the juveniles alleged to have committed offences. Whenever a Magistrate - who is not empowered under the Act to exercise jurisdiction - is of opinion that the accused brought before him is a juvenile he has to refer such matter and person to the Board.

6. In terms of Sections 14 and 15, Boards have exclusive jurisdiction to hold enquiries into allegations about juveniles having committed offence. Boards have

various options, to prescribe sanctions, including directing a juvenile to be sent to a special home for a period of three years. Section 15(1), pertinently enables the Board to:

- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against the counseling to the parent or the guardian and the juvenile;
- (b) direct the juvenile to participate in group counseling and similar activities;
- (c) order the juvenile to perform community service;
- (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
- (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years;
- (g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

7. If a question as to whether anyone is a juvenile arises, (by virtue of Section 7A) before any Court, it can consider evidence, and return findings in that regard. By reason of Section 7A(2), if the Court holds that the person is a juvenile, it has to forward the matter to the Board for passing appropriate orders or sentence, as the case may be. Section 18 mandates that a juvenile cannot be tried jointly with an adult.

8. Section 20 is important; which prescribes that when a criminal case is pending before a Court in revision or appeal, the Court (wherever the case was pending on the date of coming into force of the Act) can proceed with the matter, but if it is satisfied that the juvenile has committed the offence, refer the matter to the Board for appropriate orders.

9. It has been held in a series of decisions that if the incident occurred when the accused was a juvenile, even if he takes the plea after conviction, and in appeal, he would be entitled to the benefit of Section 20 (Jyoti Prakash Rai @ Jyoti Prakash Vs. State of Bihar, ; Pratap Singh Vs. State of Jharkhand and Another, ; Gurpreet Singh Vs. State of Punjab, ; Jitendra Ram @ Jitu Vs. State of Jharkhand, ; Ranjit Singh Vs. State of Haryana,).

10. In this case, the facts would reveal that the accused juvenile suffered imprisonment for over 10 years, i.e. over three times the maximum period prescribed under the Act, for sending a juvenile found to have committed an offence, to a special home, (which is 3 years). The report relied on by this Court - which has not been challenged by the State - indicates that he was about about 14 years or less as on the date of occurrence. As per Section 7A sub-Section (2) of the Act of 2000 if Court finds a person to be a juvenile on the date of commission of the offence, the juvenile has to be forwarded to the Board for passing an appropriate orders and sentence and the sentence, if any, passed by a Court shall be deemed to have no effect. Unfortunately, the Appellant has already spent nearly nine years in jail far in excess of the maximum period of three years that too could have been spent by him in a special home as per Section 15(1)(g) of the Act of 2000. This is not an appropriate case, to send the Appellant to the Juvenile Justice Board to be dealt with in accordance with the provisions of Section 7-A sub-Section (2) of the Act of 2000 or should we end the proceedings here. This court is of the opinion that it would be a grave injustice to direct the Appellant to face an inquiry again before the Board.

11. In similar circumstances, consistently courts have quashed proceedings, and deemed it appropriate not to remit the matter to the Board, as it would not subserve any public interest. In this case too, such an order is the only possible direction in the ends of justice. We therefore, direct that the report of the Trial Court, as to the Appellant's being a juvenile on the date of the offence has to be and is accepted; the conviction recorded by the Trial Court is quashed. The Appellant shall be released forthwith; the Appeal is disposed of in the above terms.