
(2010) 07 AHC CK 0466
In the Allahabad High Court
Case No : Criminal Revision No. 199 of 2010

Sonu @ Avanish Shankar Tiwari

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 20, 53, 7A
Juvenile Justice Act, 1986 — Section 2, 2(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307
Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004 — Rule 22(5)

Citation : (2011) 3 ACR 2628

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—By this revision u/s 53 of Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred to as "the Act of 2000"). the revisionist Sonu alias Avanish Shankar Tiwari has assailed the order dated 27.4.2010 rendered by Special Judge (E.C. Act), Gonda in Sessions Trial No. 183 of 1999, State v. Shiv Shankar Tiwari and others, whereby the learned Special Judge refused to declare the revisionist as a juvenile.

2. Heard Mr. R. P. Mishra the learned counsel for the revisionist, Mr. M. K. Mishra for the respondent No. 2 and the learned A.G.A. for the respondent No. 1 and perused the record.

3. It appears that in the aforesaid Sessions Trial, the revisionist Sonu alias Avanish Shankar Tiwari is an accused under Sections 147, 148, 149, 307 and 302, I.P.C. The incident relating to the case took place on 13.5.1998. The revisionist Sonu alias Avanish Shankar Tiwari claimed himself as a Juvenile and pleaded that his date of birth as per the High School certificate was 6.7.1981. In the school first attended the date of birth is recorded as 20.3.1981. A copy of the

voter list has been filed by the respondents, which shows that the revisionist was aged about 32 years in the year 2009. The learned Special Judge held an inquiry u/s 7A of the Act of 2000 and arrived at the conclusion that the revisionist was more than 18 years on the date of the occurrence. During the inquiry, the revisionist's father C.W. 2 Shiv Shankar Tiwari appeared as a witness in support of the plea of juvenility of the revisionist. One Sri O. S. Jackson, a clerk in the Chambers Memorial Girls School, Gonda also appeared as a witness alongwith the original school register.

4. The learned Special Judge disbelieved the school record on the ground that the revisionist's father stated that the revisionist was admitted in the school in the year 1986 and at that time the revisionist was aged about five years but no specific inference regarding the date of birth could be drawn from such statement. The date of birth mentioned in the school record was a relevant material according to the rules but the learned Special Judge failed to give due consideration to this aspect of the matter and overlooked the rules. The learned Special Judge has also placed reliance on *Pratap Singh v. State of Jharkhand*, 2005 (2) CCC 334 : 2005 (1) ACR 819 (SC). in which the Apex Court has held that entry in the school record is relevant and admissible but the entry regarding the age of a person in a school register is of not much evidenciary value in the absence of the material on which the age was recorded. The learned Special Judge further placed reliance on *Birad Mal Singhavi v. Anand Purohit*, AIR 1988 SC 1376, in which too a similar principle has been propounded.

5. Mr. R. P. Mishra. the learned counsel for the revisionist, submitted that the learned Special Judge travelled beyond his jurisdiction in placing reliance on the aforesaid rulings, specially when in the aforesaid cases the rules framed under the Act of 2000 in Uttar Pradesh were not taken into consideration. Mr. Mishra further submitted that the learned Special Judge has not decided the case as per the rules applicable in this case.

6. The learned counsel for the respondent No. 2 on the other hand submitted that the finding of fact cannot be upset in this revision. It was also submitted that the matter relates to an incident that took place prior to coming into force of the Act of 2000, therefore, the revisionist is not entitled to the benefit of the Act of 2000 unless it is shown that he was not more than 18 years on the commencement of the Act of 2000, therefore, the revisionist was not in any way a juvenile on the date of the occurrence of this case.

7. The Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004 have been framed, which deal with the various matters relating to the Juveniles. The Rule 22(5) of the said rules is the relevant rule for the purposes of determining the age of the person, who claims himself as a juvenile. The learned lower court has not considered the provisions of Rule 22(5) of the said Rules while passing the impugned order and has overlooked the same. Rule 22(5) of the said Rules is being reproduced as follows :

22(5) In every case concerning a juvenile or child, the Board shall either obtain-

(i) a birth certificate given by a corporation or a municipal authority : or

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificates, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, regarding his age; and, when 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, recorded a finding in respect of his case.

8. A similar set of rules have also been framed in the State of Jharkhand which have been referred to in the case of Babloo Pasi v. State of Jharkhand and another. 2009 (64) ACC 754 : 2009 (1) ACR 383 (SC). In other words, Rule 22(5) of the U. P. Juvenile Justice (Care and Protection of Children) Rules. 2004 is *pari materia* with Rule 22(5) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003. In the case of Babloo Pasi (*supra*) the Apex Court has interpreted Rule 22. (5) of the Jharkhand Rules and held that in the absence of birth certificate given by a corporation or a municipal authority or date of birth certificate from the school first attended or the Matriculation or equivalent certificate, the medical opinion by a duly constituted Board subject to the margin of one year, in deserving cases shall be relevant for determining the age of the alleged juvenile but the medical opinion *per se* is not a conclusive proof of the age of the person concerned and it is merely an opinion. The Apex Court further held that it would be imprudent to formulate a uniform standard for the determination of the age. True the Medical Board's opinion based on radiological examination is a useful guiding factor for determination of the age of a person but is not incontrovertible. The date of birth is to be determined on the basis of material on record and appreciation of the evidence adduced by the parties.

9. Under the Rule 22(5) of the U. P. Juvenile Justice (Care and Protection of Children) Rules. 2004. the date of birth certificate issued by a corporation or a municipal authority or school is the relevant material for determining the age of the person who claims to be a juvenile. In absence of these materials, the medical opinion which is controvertible, may be taken into consideration. While considering the medical opinion, a margin of one year for determining the age may be given.

10. Apparently, the learned Special Judge has not proceeded to determine the question of juvenility of the revisionist in accordance with the aforesaid Rule 22(5). If the school record entry was not genuine and there was no birth certificate given by a corporation or a municipal authority, the medical opinion by a duly constituted medical board subject to a margin of one year ought to have

been obtained and taken into consideration but no attempt was made to procure such opinion.

11. According to the learned Special Judge, the date of birth in the school first attended by the applicant was different from the date of birth recorded in the High School certificate. In the High School certificate, the date of birth is 6.7.1981, whereas in the initial institution the date of birth was recorded as 6.3.1981. In my opinion, this aspect of the matter was not very relevant in view of the fact that the applicant was less than 18 years on the date of occurrence on the basis of the date of birth recorded in the initial school as well as in the High School certificate. The applicant was 16 years, 10 months and 7 days on the date of occurrence according to the High School certificate and he was 17 years 2 months and 7 days on the date of occurrence according to the initial school's record, but according to both the records, he was less than 18 years. The learned counsel for the respondent No. 2 submitted that on the date of occurrence the Juvenile Justice Act, 1986 was in force and in that Act a person was considered to be a juvenile if he was below 16 years on the date of the occurrence. In view of the fact that the revisionist was more than 16 years on the date of occurrence, he was not a juvenile, therefore, he cannot be permitted to claim any benefit of being juvenile under the Act of 2000. The learned counsel for the respondent No. 2 further submitted that under the new Act a person is considered as a juvenile if he has not completed 18 years of age on the date of the commission of the offence. It may not be out of context to mention that the Act of 2000 came into force on 1.4.2001. therefore, according to the learned counsel for the respondent No. 2 the revisionist had completed more than 18 years before the date of the commencement of the Act of 2000, therefore, he was not a juvenile. In this connection, the learned counsel for the respondent No. 2 relied on Pratap Singh's case, Jabar Singh v. Dinesh and another. 2010 (69) ACC 326 : 2010 (2) ACR 1214 (SC) and Munne v. State of U.P., 2006 (12) SCC 697 : 2006 (3) ACR 2494 (SC), and submitted that the revisionist was not a juvenile on the date of occurrence.

12. The learned counsel for the revisionist, in reply submitted that by the Amendment of 2006 certain amendments were made in various sections including Section 20 of the Act of 2000 and thereby an Explanation was added in Section 20. After the amendment, the principles laid down in Pratap Singh's case (supra) have no material bearing. The Explanation to Section 20 of the Act of 2000 is extracted as follows :

Explanation.-In all pending cases including trial, revision, appeal or any - other criminal proceedings in respect of a juvenile in conflict with law in any Court, the determination of juvenility of such a juvenile shall be in term of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

13. The provisions of Act of 2000 as amended by the Amending Act of 2006 have been considered by the Apex Court in the case of Hari Ram Vs. State of Rajasthan and Another, The Apex Court held :

The said intention of the Legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein also it has been clearly indicated that in any pending case in any Court the determination of juvenility of such a juvenile has to be in terms of Section 2(1) even if the juvenile ceases to be so "on or before the date of commencement of this Act" and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed.

14. In the case of Jabar Singh v. Dinesh (supra) relied upon by the learned counsel for the respondent No. 2 the Amendments of 2006 incorporated in the Act of 2000 were not taken into account and is silent in regard thereto, therefore, the view expressed in Hari Ram's case (supra), taking into account, the amendments would prevail.

15. In view of the principles propounded in Hari Ram's case (supra) it is crystal clear that if the revisionist was less than 18 years on the date of occurrence, though the same took place prior to the commencement of the Act, 2000, he shall be treated as a juvenile and his case cannot be discarded on account of the fact that he had become more than 18 years on the commencement of Act of 2000.

16. The revision, therefore, succeeds and is allowed.

17. The impugned order is set aside and the matter is remanded back to the Special Judge. Gonda with the direction to reconsider the matter in the light of the observations made herein above and pass an appropriate order afresh in accordance with law after providing a reasonable opportunity of hearing to the parties.