
(2013) 08 PAT CK 0046

In the Patna High Court

Case No : Criminal Miscellaneous No. 36698 of 2012

Usha Devi

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 64, 7A, 7A(1)
Penal Code, 1860 (IPC) — Section 302, 363, 366

Citation : (2013) 3 PLJR 871

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Advocate : Mr. Ansul, for the Appellant; Manish Chandra Gandhi and Mr. Jharkhandi Upadhayay for the State, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Prasad, J.—Heard.

This is an application for quashing the order dated 28.7.2012 passed in Sessions Trial No. 429 of 2010 by which the Ad hoc A.D.J.-II, Vaishali at Hajipur, has declared the accused Om Prakash Singh as juvenile.

The prosecution case as alleged in the written report on the basis of F.I.R. lodged by the Usha Devi that her daughter is attaining the age about 14 years some weeks prior to the occurrence her nephew (son of the brother of the husband) and her father-in-law came to her house and disclosed that his wife is ill and so let the victim go with him at his Sasural and then petitioner after enticing the victim took her alongwith his father-in-law. When the informant asked how long victim will serve and when she will come back then mother of Om Prakash disclosed that victim will come back within a week. Thereafter, neither Om Prakash Singh came nor inform about victim and when the co-villagers went to the Sasural then they found wife of Om Prakash Singh, Khusbu Devi was there and rest persons were not there and they had left the place and Neelam Kumari was also missing. Then 25.2.2010, Om Prakash Singh came to his village and

tried to flee away clandestinely then he was caught by the villager and it was alleged that they have either killed her daughter or have sell her daughter. On the said written report, it was ordered to lodge a case under Sections 363 and 366 of Penal Code. However, subsequently the dead body of the victim was recovered from septic tank built in the community hall which was indicated by the father of the victim.

2. However, during investigation charge-sheet has been submitted and cognizance was taken for offence under Sections 363, 302 and other allied Sections and subsequently, the case was committed to the Court of Sessions. However, plea of juvenility was taken before the Sessions Judge where case was pending and a petition was filed on 23.12.2011 with a prayer to send the record before Juvenile Justice Board claiming that the accused Om Prakash Singh is juvenile. It was stated that date of birth of the Om Prakash Singh is 15th October, 1994, whereas the date of occurrence is dated 26.2.2010 and so at the time of occurrence the opposite party No. 2, namely, Om Prakash Singh was only 16 years old and in prove of juvenile, photo copy of Admit Card and Mark-sheet was attached followed by this petition dated 23.12.2012 and another petition dated 25.7.2012 asserting the date of birth of the opposite party No. 2 is 15.10.1994 and the opposite party No. 2 in support of his contention has filed Matriculation Certificate and School Leaving Certificate. It has further been asserted that name of the father of the opposite party No. 2 mentioned in the F.I.R. as Ram Shrestha Singh, but father's name of the opposite party No. 2 mentioned as Ram Shrestha Singh alias Ram Prasad Singh and mother name of the opposite party No. 2 as Bimla Devi. It was also asserted that remand order also speaks Ram Shrestha Singh alias Ram Prasad Singh and it was stated earlier petition, though, a petition was filed on behalf of the opposite party No. 2 was not pressed and this petition has been filed as pressed with a prayer to send to the case to the Juvenile Justice Board.

3. A rejoinder was filed to the petition dated 25.7.2012 and it was asserted that petition on behalf of the accused person is not maintainable and it was asserted that date of occurrence is two weeks prior to the filing of the F.I.R., though, the informant has filed a petition in Mahua Police Station on 26.2.2010. It was further asserted that, though, matriculation certificate and admit Card shows the date of birth of the opposite party No. 2, Om Prakash Singh on 15.10.1994, but in column of father's name Ram Prasad Singh has been mentioned whereas in the F.I.R. father's name of the opposite party No. 2 has been mentioned as Ram Shrestha Singh and so it is vital contradiction in the father's name of the opposite party No. 2 in the document filed by the opposite party No. 2 It was further asserted that earlier a petition was filed on behalf of the opposite party No. 2 was disposed of as not pressed. It has further been asserted that informant has filed voter list of Jagangirpur Salkhani in which serial No. 173 name of Bimla Devi shows wife of Ram Shrestha Singh and even in the photo copy of Pass Book of Bimla Devi mentioned as wife of Ram Shrestha Singh and has filed a certificate of Sarpanch and members of Jila Parishad in which shows

Om Prasad Singh, son of Ram Shrestha Singh and no alias name is available in Village-Chandpura Salkhanni. It was further asserted that there is vital contradiction regarding father's name of the opposite party No. 2 so it is difficult to rely upon the certificate and it is sufficient ground to reject the petition dated 15.7.2012 filed by the opposite party No. 2 and he has also annexed photo copy of voter list and pass book and in the Pass Book Bimla Devi shows wife of Ram Shrestha Singh.

4. However, the trial court after taking into consideration the submissions of both parties and rejoinder petition, perused the order sheet dated 28.2.2010 on the date the accused was remanded and found in the said order father's name of the opposite party No. 2 as Ram Shrestha Singh alias Ram Prasad Singh. He also found that in the charge-sheet father's name of the opposite party No. 2 is only Ram Shrestha Singh and in the voter list, certificate issued by the Sarpanch and members of Zila Parishad the father's name of the opposite party No. 2 as mentioned as Ram Shrestha Singh and there is no alias name. In the bail petition preferred by the opposite party No. 2 before Hon'ble court in Cr. Misc. No. 41519 of 2010, the opposite party No. 2 has mentioned his name and father's name as Ram Shrestha Singh alias Ram Prasad Singh. He has also perused the Matriculation Certificate and Admit card as well as photo copy of the mark-sheet in which date of birth as shown to be 15th October, 1994, mother's name as Bimla Devi and father's name as Ram Prasad Singh and court below found that only dispute between the parties is whether father's name of the accused-opposite party No. 2 is Ram Shrestha Singh alias Ram Prasad Singh, but there is no dispute about the mother's name.

5. It has also been found that document filed by the accused with matriculation certificate admit card as well as mark-sheet and in those document the mother's name of the opposite party No. 2 has been mentioned as Bimla Devi, though, there is dispute about father's name of the opposite party No. 2, but there is no dispute in regard to mother's name of the opposite party No. 2 and even other side does not dispute regarding name of Bimla Devi, mother of the opposite party No. 2 and the case is also established by the prosecution as prosecution does not dispute the identity of the opposite party No. 2 is the accused. The trial court after perused the record observed that prosecution does not dispute nor even asserted that document filed on behalf of the accused-opposite party No. 2, namely, Om Prakash either forged or fabricated but only dispute the father's name and under this facts and circumstances, the trial court held that when the document filed on behalf of the accused does not challenged as forged and fabricated and document mentioned the name of mother alongwith name of father as Ram Prasad Singh and no evidence has been brought that there is other persons in the village as Ram Shrestha Singh having his son Om Prakash Singh and hence on that basis the trial court held that there is no reason to disbelieve the document on the ground that alias name of the father of the opposite party No. 2 not found in the document and it may be a clerical mistake.

6. Learned counsel for the petitioner submitted that matriculation certificate, admit card shows father's name of the petitioner as Ram Prasad Singh whereas in the First Information Report shows father's as Ram Shrestha Singh. In the voter list shows Bimla Devi, wife of Ram Shrestha Singh and had there been alias name of Ram Shrestha Singh there even mentioned in the F.I.R. and it is asserted that alias name in the document which been created during pendency of the application and all the documents prior to the occurrence do not contain alias name and alias name of father of the accused of the remand order of the opposite party No. 2 not based any document.

7. Learned counsel for the petitioner has asserted that medical board be constituted to ascertain the age of the accused as document filed shows dispute the name of father's name and in the vital contradiction, father's name of the opposite party No. 2, it is difficult to rely on the document and it is sufficient ground to reject the petition.

8. Learned counsel for the complainant however contends that document has well been considered by the court and only contention raised there about father's name and court below after due consideration of the fact and material as well as contention of the parties hold that in the Admit Card and Matriculation certificate mentioned father's and mother's name of the opposite party No. 2 and it is not disputed that mother's name of the opposite party No. 2 is Bimla Devi and trial court in due consideration hold that the documents filed having been disputed and from the fact it is apparent that identity of the opposite party No. 2, it is not disputed that he is son of Bimla Devi and it is also not disputed she is wife of Ram Shrestha Singh and omission of alias name Ram Prasad Singh in the document is mistake and hence, there is no reason to go for further enquiry and there is no reason to disbelieve and rejected the finding recorded by the lower court. Hence, on the respective submissions, question for consideration whether order impugned required to be interfered.

9. From respective submission, it is apparent that the dispute is with regard to the age of the accused to decide whether he is juvenile. The scheme of Juvenile Justice Act & Rules framed therein provides the manner for deciding the age of juvenility. The proviso to Section 7A(1) provides that the claims of juvenility can be claimed at any time at any stage and even after disposed of the case provided the accused was juvenile on the date the act came in existence as well as the time of occurrence.

10. The Court is expected to make enquiry under the act about the juvenility or age of the accused. The enquiry for determination of the age of accused a juvenility is required to be done by the Court not in an enquiry during investigation. There is specific provision for manner of enquiry about the age of juvenile enshrined rule framed by Central Government Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and Rule 22(3) of Bihar Juvenile Rules, 2003.

11. It is relevant to quote Rule 12 of Juvenile Justice (Care & Protection of Children) Rules, 2007:--

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, 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 appearances or document, 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 order 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 any 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 off 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.

12. Rule 22(5) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003, quoted as follows:--

(5) In every case concerning a juvenile or a 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 certificate, 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, record a finding in respect of his age.

13. Hence from the abovementioned Rule, it is apparent that the evidence relevant for purpose of determining the age is first to take matriculation certificate in or birth certificate etc. as mentioned in 12(3)(a)(i)(ii)(iii) or 22(5)(i)(ii)(iii) and in the absence of these document only the Court proceed to consider the Medical Board. This view is supported by decision reported in Sachin Kumar Gupta @ Sachin Kumar Vs. The State of Bihar and Another, .

14. Hence under Juvenile Justice Act, the age of the accused based on the document is conclusive during trial. However, contention of the learned counsel for the petitioner doubted certificate filed by the opposite party No. 2 on the ground that alias name of father of the opposite party No. 2 mentioned as Ram Prasad Singh not found in the First Information Report whereas father's name of the opposite party No. 2 in the First Information Report mentioned as Ram Shrestha Singh but there is no dispute that the genuineness of the certificate nor dispute the mother's name nor the identity of the accused.

15. However, taking into consideration the evidence, it is asserted that prosecution did not challenge the authenticity of the document as forged and fabricated and whole thrust challenged regarding father's name of the opposite party. Besides mother's name of the opposite party No. 2 has also found in the document, prosecution did not dispute the name of mother name found place in the apparent order as early as 25.2.2010 when the alleged occurrence took place

one or two weeks prior to the filing of the F.I.R.

16. Hence finding by the trial court about genuinity of the age of opposite party No. 2 on the basis of document, I do not find any merit to interfere with order impugned recorded by the lower court. Accordingly, with the above observations, the petition is hereby dismissed.