

(1998) 06 GAU CK 0004

In the Gauhati High Court

Case No : Criminal Revision No. 484 of 1997

Ysuf ali@Ysuf Ali Chowdhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 397, 482
Penal Code, 1860 (IPC) — Section 366(A), 368

Citation : (1998) 4 GLT 340

Hon'ble Judges : B.N. Singh Neelam, J

Bench : Single Bench

Advocate : H.R.A. Choudhury and M.H. Rajbarbhuyan, for the Appellant; P.P., N. Choudhury, S.C. Kayal and B.W. Phira, for the Respondent

Judgement

B.N. Singh Neelam, J.—This Criminal Revision Petition is so preferred by the Petitioner Sri Yusuf Ali @ Sri Ysuf Ali Choudhuiy u/s 397 read with Section 482 of the Code of Criminal Procedure particularly being aggrieved by the order so passed by the learned Judicial Magistrate Cachar at Silchar dated 26.5.97 in connection with Silchar P.S. Case No. 509/97 so registered u/s 366(A) and 368 of the IPC, the operative portion of which is quoted below for ready reference:

... in compliance to this Court's order dated 16.5.97, medical report is submitted perused the same. Special Medical Board opined that the victim girl Smt. Supriya Deb @ Soma is above 17 years and below 18 years. In view of this position Sri Pranesh Ranjan Deb being the father of the victim girl is allowed to take custody of said victim girl who is a minor on his executing a bond of Rs. 2000/- with condition that he will produce the victim minor as and when called for....

2. The contention of the Petitioner above-named as detailed in the body of this Criminal Revision Petition mainly is that Smt. Supriya Deb @ Soma was not a minor on the alleged date of occurrence i.e. on 21.4.97 and that being the position, the learned court below has erred thus curtailing her movement and liberty putting under the guardianship when being major she was free as to move

wherever she liked and to take major decisions with regard to her choosing life partner. In support of this contention that Smt. Supriya was not minor the first point which is so emphatically put for consideration by the learned Counsel appearing on behalf of the Petitioner, Mr. H.R.A. Choudhury, is that the date of birth of Supriya entered in the Register in which she was pursuing her studies is shown 1.3.75 and that being the position, she was aged about 22 years on the alleged date of occurrence and thus definitely major. In support of this contention attention is drawn to Annexure-1 which is the provisional certificate so issued by the educational institution concerned in which her date of birth is mentioned. Mr H.R.A. Choudhury, the learned Counsel for the Petitioner has also submitted that this date of birth has never been challenged by Supriya's brother, the informant or her father before the learned court below. Furthermore, the case is registered for alleged occurrence taking place on 21.4.97 after a lapse of considerable time on 2.5.97 that too not by the father but, by the brother of Supriya at the instance of others and when after arrest of the Petitioner and Supriya by the police on 13.5.97, the statement of Supriya was so recorded u/s 164 of the Code of Criminal Procedure on 14.5.97 i.e. just the next day, a copy of which is filed and marked as Annexure-7. Supriya is very specific in stating her age to be 22 years which finds support with provisional school leaving certificate in which she has also stated before the judicial Magistrate with regard to be her attaining majority and choosing to move with the Petitioner at her sweet-will also entered into marriage agreement on 22.3.97, a copy of which is also filed, with that of her even accepting the present Petitioner as her life partner (husband). When Supriya was so produce before the learned court below, it transpires that as to ascertain her age particularly as to whether she was minor or major, the learned court below feeling not satisfied with the report of the medical expert dated 16.5.97 (Annexure-10), directed for the constitution of the Board for Supriya to be reexamined by the Board but, as submitted by the learned Counsel for the Petitioner Mr. H.R.A. Choudhury, by looking into the reports dated 16.5.97 the first report of the Medical expert with that of the report of the Medical Board dated 26.5.97 is transpires that the Medical Board did not care at all as to examine Supriya with open minds afresh, rather the Board's opinion reveals with regard to mechanically verbatim putting the same findings as arrived at by the report dated 16.5.97 which was seriously suspected by the learned court below. Mr. H.R.A. Choudhury, the learned Counsel for the Petitioner, in this connection, has read the relevant portion of both the medical reports challenging if there was any fresh radiological test, it was incumbent on the part of the Board as to refer the number of X-Rays plate etc. for the satisfaction particularly of the court but, simply opining that Supriya was above 17 years of age and below 18 years of age was such a vague opinion and that too the age so indicated taking a person from minority to majority on such a border line that the benefit of which, rather should have gone to Supriya in the background of the other corroborative evidence such as school leaving certificate at that time when occurrence is said to have taken place her attaining 22 years of age and her 164 code of Criminal Procedure statement claiming to be 22 years and the same being also assessed

by the court recording the statement otherwise the Judicial officer would have definitely put his separate assessment with regard to her age which would have been reflected by her physical appearance. On behalf of the Petitioner it is also pointed out that Supriya was never a patient of psychosis as at one time claimed by her brother/father for procuring her custody fraudulently on this ground when she was major which, as submitted, would be apparent by looking into the medical report which is specific in stating that no mental disease or abnormality was so found when she was so subjected to medical examination on 13.5.97 by a single Medical expert and on 26.5.97 by the Medical Board and it is further pointed out that surprisingly enough, Supriya was examined by the Medical Board on 26.5.97 and a report is said to have been submitted before the court on that very day and the impugned order was so also passed on that very day which shows how mechanically the impugned order was passed and in haste, when the Board opining the instant case. In this background, hence the prayer so made by the learned Counsel for the Petitioner Mr H.R.A. Choudhury is that the impugned order with regard to the custody of Supriya so given to Shri Pranesh Rajan Dev be set aside and rather she be allowed to live a happy life with the present Petitioner (husband). Lastly, is also submitted that by particularly referring to the Voter List which is marked as Ext. 9, the voter list of the year 1993 shows her age to be 18 years which is very much in conformity with the two school leaving certificates. In support of his this contention, the learned Counsel for the Petitioner, Mr H.R.A. Choudhury, also claimed himself to be fortified with some of the reported cases. By referring to *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, its head note B para-9, it is pointed out that opinion of Doctor as to age of a person after radiological test may have a margin or error of two years of either side and in the instant case, her age being so indicated being on border line on no account it can be said that she was minor at that time when there are other corroborative materials such as Voter List. School Leaving Certificates etc. in his support. Another reported case so cited is *Mayur Panabhai Shah Vs. State of Gujarat*, and it is pointed out that the doctor's evidence has to be appreciated like that of any other witness and no presumption can be taken that a doctor is always witness of truth. In this connection, particularly para-2 of the said judgment is referred. The third reported case referred is *Surjan and Others Vs. State of Rajasthan*, This case is cited submitting that the High Court can give effect to its own independent conclusion and on the material available on the record, the learned Counsel for the Petitioner, has submitted that an independent view of the matter can well be taken with regard to ascertainment of the age of Supriya as on 21.4.97 the date of occurrence.

3. The opposite party No. 2 Sri Pranesh Ranjan Deb is represented by the learned Counsel, Mr. N. Choudhury, it is pointed out that since Supriya was a minor as also held by the medical expert, the learned court below was perfectly justified by giving the custody of Supriya to her father with certain conditions. It is also pointed out that the impugned order can well be said to be an

interlock(sic)ory order and that the medical report thus would not have been challenged and the prayer so sought for is also vague. In support of his this contention that the medical opinion regarding age of a person which is so done after radiological examination and ossification test can well be relied upon which can be said to be more trustworthy than the date of birth entered on record in school. In support of his this contention, Mr. N. Choudhury, the learned Counsel for the opposite party has relied upon a reported case Dayachand Vs. Sahib Singh and another, hence the prayer is that there is nothing wrong in the impugned order under challenge and since this Criminal Revision petition has got no merit, the same be dismissed.

4. After hearing both the sides lawyers taking into consideration the facts discussed above also by going through he Annexure so filed as also referred to above, particularly on behalf of the Petitioner in support of his contention that on the alleged date of occurrence Supriya was major rather of 22 years of age and also keeping in mind that on behalf of the Petitioner, in support of her being major over the above, the school leaving certificates, voter list etc. were also so produced which shows her to be of 18 yrs. of age in 1993 itself I find that there is much of substances in the argument so advanced by Mr. H.R.A. Choudhury, the learned Counsel for the Petitioner, as to hold that at the relevant time, Supriya can well be said to be over 18 years of age and the medical report so reflecting opinion of her being over 17 years of age and below 18 years of age cannot be relied upon because of the opinion so given on age is on border line and further more, even if the medical board was constituted, the close scrutiny of the report dated 16.5.97 and the opinion of the Medical Board reveal that it is nothing but the verbatim reproduction of the opinion so given by the single medical expert on 16.5.97 which was seen with great suspicion even by the learned court below and reusing the same there was order for constitution of the Medical Board. Since the matter in the Criminal Revision petition hinges only with regard to the ascertainment of the age of Supriya particularly as to whether she was minor or major at the relevant time, no other points are in any way taken into consideration. Consequently, feeling satisfied in the background of the material so available as discussed above I hold the opinion that the impugned order under challenge require interference. Taking that view, the said order is set aside to the extent of Supriya being held as minor given in custody of her father. In my considered opinion, as on 21.4.97 she was major. The prayer so made on behalf of the Petitioner as to give the custody of Supriya to him declaring her major has no leg to stand. She being found and held major as on 21.4.97 she is free as to take decision with regard to her future line of action for the settlement of her life and to move at her sweet will and thus, there being no question of her being kept in the custody of the guardian.

With the above direction and observation, this Criminal Revision Petition stands accordingly disposed of.