
(2014) 05 SIK CK 0001
In the Sikkim High Court
Case No : Crl. A. No. 8 of 2013

Zeegee Lachenpa

APPELLANT

Vs

State of Sikkim

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 19, 2(1), 27, 29, 7A

Uttar Pradesh Children Act, 1951 — Section 2(4)

Citation : (2014) CriLJ 3352

Hon'ble Judges : Sonam Phintso Wangdi, J

Bench : Single Bench

Advocate : T.R. Barphunga, Mr. S.P. Bhutia, Advocates and Party-in-Person, Advocate for the Appellant; J.B. Pradhan, Public Prosecutor, Mr. Karma Thinlay Namgyal, Additional Public Prosecutor and Mrs. Pollin Rai, Assistant Public Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sonam Phintso Wangdi, J.—When the matter was taken up for hearing today, Mr. Tashi Raptan Barphunga, Learned Counsel for the Appellant, at the very inception, brought to the notice of this Court Exhibit 5, birth certificate in respect of the Appellant, issued by the Chief Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim, wherein the date of his birth is found entered as 09.07.1992 and, as would appear from the relevant column, it was issued on 20.03.1998, which is the very day when it was registered.

2. Mr. Barphungpa submits that the seizure of this document was made by the Investigating Officer during the course of the investigation of the case vide seizure memo Exbt. 10 dated 07.04.2010 at Lachen, North Sikkim. These facts are undisputed.

3. It is thus submitted that on 20.03.2010 when the offence was committed, as would appear from the FIR, the appellant would be a minor of just over 17 years,

and, therefore, a juvenile in conflict with law as contemplated u/s 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. In view of this, the Learned Counsel would submit that the entire proceedings held against the Appellant before the trial Court stand vitiated and the conviction and sentence liable to be quashed.

4. Mr. Barphungpa refers to Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and submits that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after disposal of the case and that such claim shall be determined in accordance with the provisions contained in the Act and the rules framed thereunder, even if the juvenile ceased to be so on or before the commencement of the Act. We may for convenience reproduce Section 7A of sub-section 1 and proviso thereto for convenience:-

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 recognised 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.

5. We have also perused Rule 12 pertaining to the determination of age of the juvenile as provided under the Juvenile Justice (Care and Protection of Children) Rules, 2007. Clause (a) of sub rule 3 of Rule 12 of the said Rules, which would be material for the purpose of determination of the present case provides as under:-

12.....

(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 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;

.....

6. Relying upon the above provision, Mr. Barphungpa submits that the birth certificate, Exbt. 5 issued by the Chief Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim, fulfills the requirement of sub-clause (a) of sub rule 3 of Rule 12 and nothing further needs to be done in this regard.

7. Mr. J.B. Pradhan, learned Public Prosecutor, fairly concedes to the legal position. Under these circumstances, the only question that requires to be determined is as to what would be the consequence, now that the Appellant is a major of at least 24 years. Mr. Barphungpa submits that this question also stands answered in Vijay Singh Vs. State of Delhi, where, upon consideration of a number of earlier decisions of the Hon"ble Supreme Court, it was directed that the appellant be released forthwith by setting aside the sentence imposed upon him upholding the conviction. The foundational decision relied upon by the Hon"ble Supreme Court in that case was Jayendra and another Vs. State of Uttar Pradesh, which is found reproduced at paragraph 18 which reads as under:-

18. The Court observed as under (Jayendra case, SCC pp. 149-5-paras 3-4)

3. Section 2(4) of the Uttar Pradesh Children Act, 1951 (U.P. Act 1 of 1952) defines a child to mean a person under the age of 16 years. Taking into account the various circumstances on the record of the case we are of the opinion that the appellant Jayendra was a child within the meaning of this provision on the date of the offence. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 29 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.

4. For these reasons, though the conviction of the appellant Jayendra has to be upheld, we quash the sentence imposed upon him and direct that he shall be released forthwith.

(underlining mine)

8. In the present case, I find no reason to suspect the authenticity of the birth certificate, Exbt. 5 which in any case was exhibited during the trial without any objections.

9. Under such circumstances, I am convinced that the appellant was below the age of 18 years on the date of commission of the offence, and, therefore, as in the case of Vijay Singh v. State of Delhi (supra) the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, would also apply in full force even in

the case of the appellant.

10. Under these circumstances, the Learned Counsel for the Appellant submits that he would not question the finding of the learned trial Court on the merits of the case, but would rather prefer to press that the appellant be discharged forthwith.

11. There appears to be force in this submission and, accordingly upholding conviction passed by the learned trial Court upon the appellant, the sentence stands quashed and set aside. Needless to state, that the appellant shall have the advantage of the provisions of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

12. In the result, The Appeal is allowed.

13. No order as to costs.

14. Let a copy of this judgment along with the original records of the case be transmitted forthwith to the Court of the Learned Sessions Judge, Special Division-II, Sikkim at Gangtok, for its due compliance.