

Rakesh Patel Vs. the State of Madhya Pradesh

Rakesh Patel Vs. the State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/1045827

Court : Madhya Pradesh

Decided On : Jul-23-2013

Appellant : Rakesh Patel

Respondent : The State of Madhya Pradesh

Judgement :

Cr.Rev.

No.640/2010 Criminal Revision No.640/2010 Rakesh Patel versus State of M.P.& another 23.07.2013 Shri Vijay Shrivastava, Advocate for the applicant/complainant.

Shri Umesh Pandey, Govt.

Advocate for the respondent no.1/State.

Shri Amit Verma, Advocate for the respondent no.2/accused.

This revision has been filed by applicant/complainant under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order dated 12.3.2010 passed by Special Judge (Electricity Act) Bhopal in Criminal Appeal No.101/2010, whereby the order dated 22.1.2010 passed by Principal Judge, Juvenile Justice Board, Bhopal was affirmed in the Regular Trial No.161/2008.

The respondent no.2 is being prosecuted for an offence under Sections 307 and 302 of the Indian Penal Code.

Charge sheet against him was filed in the Juvenile Court, Bhopal.

On objection being taken by the complainant about the age of respondent no.2, an inquiry was conducted wherein a certificate of High School Examination 2007 was produced.

After appreciating the said evidence Juvenile Court concluded that the age of accused was under 18 years on the date of incident which occurred on 18.12.2007.

The date of birth of accused was recorded in the marksheet as 26.9.1990.

Against the order passed by the Juvenile Court an appeal was preferred by the complainant before the Court of Cr.Rev.

No.640/2010 Additional Sessions Judge, who by order dated 12.3.2010 dismissed the appeal and affirmed the finding recorded by the Juvenile Court.

Aggrieved by the aforesaid order complainant has filed this revision.

Learned counsel for the applicant/complainant submits that it was necessary for the Juvenile Court to have recorded the statement of accused himself and to direct ossification test in respect of the age of accused.

Learned counsel further submits that from the voter list it was apparent that in the year 2005, accused had completed the age of 18 years. therefore, the finding recorded by both the Courts below was incorrect.

Learned counsel for the respondent no.2/accused submits that from the provisions of Section 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, it is apparent that the matriculation or equivalent certificates of education are the best evidence.

In the absence of such kind of evidence only, the other evidence can be permitted.

For the sake of convenience, relevant provisions of Rule 12 are reproduced:- 12.

Procedure to be followed in determination of Age.-(1) In every case concerning a child or 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, Cr.Rev.

No.640/2010 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) fiRs.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, Cr.Rev.

No.640/2010 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.

After having heard the learned counsel for the parties and after perusal of the evidence on record and also the provisions of Rule quoted hereinabove, I am of the opinion that learned Courts below committed no error in holding that respondent no.2/accused on the date of offence was under 18 years of age.

I find no substance in this revision.

It is, accordingly, dismissed.

(RAKESH SAKSENA) JUDGE AD/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com