

**Dablu @ Manish Kumar Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Feb-05-2004

**Judge :** Chandramauli Kr. Prasad, J.

**Acts :** Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 53

**Appeal No. :** Cri Revision No. 699 of 2003

**Appellant :** Dablu @ Manish Kumar

**Respondent :** State of Bihar

**Advocate for Def. :** Birju Prasad, Adv. and Shyameshwar Dayal, Addl. P.P.

**Advocate for Pet/Ap. :** Rajendra Narayan, Adv.

**Disposition :** Application allowed

**Prior history :** Chandramauli Kr. Prasad, J. 1. This revision application has been preferred under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order dated 30th September, 2003 passed by the 2nd Additional Sessions Judge, Darbhanga in Criminal Appeal No. 16 of 2003 whereby it has reversed the order dated 25.7.2003 passed by Additional Chief Judicial Magistrate, Darbhanga in Misc. Case No. 8 of 2003 (G.R. 734 of 2003 arising out of Laheriasarai P.S. Case No. 90 of

**Judgement :**

## **Chandramauli Kr. Prasad, J.**

1. This revision application has been preferred under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order dated 30th September, 2003 passed by the 2nd Additional Sessions Judge, Darbhanga in Criminal Appeal No. 16 of 2003 whereby it has reversed the order dated 25.7.2003 passed by Additional Chief Judicial Magistrate, Darbhanga in Misc. Case No. 8 of 2003 (G.R. 734 of 2003 arising out of Laheriasarai P.S. Case No. 90 of 2003) and held that the petitioner is a juvenile.

2. Short facts giving rise to the present application are that the petitioner is an accused in Leheriasarai P.S. No. 90 of 2003 registered under Section 307, 324 and 323/34 of the Indian Penal Code for an occurrence which is alleged to have taken place on 21.4.2003. Petitioner claimed to be a juvenile and for the determination of this age an enquiry as provided under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short the Act), was held by the Additional Chief Judicial Magistrate. Petitioner in support of his contention that he is a juvenile, produced the school leaving certificate in which his date of birth has been entered as 15th of August, 1986. Petitioner was referred to the Darbhanga Medical College and Hospital for his examination by the Medical Board for determination of his age and in pursuance thereof he was examined by the Medical Board on 18.6.2003 and on that date radiological test and other tests were held and ultimately the Medical Board submitted its report dated 27.6.2003 assessing the age of the petitioner between 18-19 years. The Additional Chief Judicial Magistrate observing that there can be margin of error in determination of age by radiological examination by two years on either side and relying on the entry made in the school leaving certificate as also from the appearance of the petitioner, held the petitioner's age to be about 17 years. Accordingly, he by order dated 25.7.2003 held the petitioner to be a juvenile. Against the said order the informant preferred Criminal Appeal No. 16 of 2003 which was heard by the 2nd Additional Sessions Judge, Darbhanga who by his order dated 30th September, 2003 set aside the order of the learned Magistrate and held the petitioner not to be a juvenile. While doing so the appellate Court observed that the genuineness of the school leaving certificate is doubtful and in the absence of any

contemporaneous documents, such as ration card or any official document or horoscope etc. the learned Magistrate ought not to have placed reliance on the school leaving certificate.

3. Mr. Rajendra Narayan appearing on behalf of the petitioner submits that there being conflict between the age mentioned in the school leaving certificate and assessed by the medial board, date of birth entered in the school leaving certificate was rightly accepted by the Additional chief Judicial Magistrate which ought not to have been ignored by the appellate Court. He points out that error of two years on either side in respect of the age determined by the medical board is well known. He also highlights that the learned Magistrate had the opportunity to see the petitioner, which opportunity the appellate Court did not had, and in such circumstance the appellate Court ought not to have reversed the finding of the learned Magistrate. In any view of the matter, Mr. Narayan contends that even if the age of the petitioner was 18 years on 18.6.2003 i.e., on the date of his examination by the Medical Board, on 21.4.2003 i.e., the date of occurrence, he was surely below 18 years of age. In support of the submission, Mr. Naryana has placed reliance on a judgment of the Supreme Court in the case of *Jaya Mala v. Home Secretary, Government of Jammu and Kashmir and Ors.*, AIR 1982 SC 1297, and my attention has been drawn to the following passage from paragraph 9 of the said judgment:--

'9. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by the radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This young school going boy may be enthusiastic about the students' rights and one two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstance of this case, the detention order was wholly unwarranted and deserved to be quashed.'

(Underlining by me)

4. Mr. Shyameshwar Dayal, Addl. Public Prosecutor appearing on behalf of the State and Mr. Birju Prasad representing the informant submit that in the facts of the present case the appellate Court rightly did not place reliance on the school leaving certificate and placing reliance on the report of the medial board rightly held that the petitioner is not a juvenile.

5. In my opinion, no hard and fast rule can be laid in regard to weightage to be given either to the school leaving certificate or the report of the medial board. It will depend upon the facts and circumstance of each case. When there is no doubt in regard to the certificate granted by the authority then in that case entry made therein shall have higher value. However, in a case in which the certificate looks to be doubtful, the opinion given by the Medical Board may be worthy of reliance. I am of the considered opinion that this is in realm of appreciation of evidence and for that every case has to be decided on its own merit. However, one has to bear in mind that the opinion of the medical board is after all an opinion and till date science has not developed to the extent that it can accurately assess the age whereas the school leaving certificate is granted on the basis of declaration made by the guardian or the parents of the child at the time of his admission and in a case in which there is either no interpolation, misrepresentation or fraud, the entry made in the school leaving certificate shall certainly carry more weight. Reference in this connection can be made to a decision of the Supreme Court in the case of Umesh Chandra v. The State of Rajasthan, AIR 1982 SC 1057, in which it has been held as follows :--

'7. We agree with the High Court that in cases like these, ordinarily the oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it an be prepared at any time to suit the needs of a particular situation. To these extent, we agree with the approach made by the High Court.

6. Here in the present case, in case the certificate relied on by the petitioner is taken into consideration, he shall be below 17 years on the date of occurrence i.e., 21.4.2003. The medical board had examined the petitioner on 18.6.2003 and vide its report dated 27.6.2003 it assessed the age between 18-19 years. If two years margin is given on the lower side, same is in conformity with entry made in the school leaving certificate. The learned Magistrate in such circumstances had held the petitioner to be a juvenile. He had also the advantage of seeing the petitioner in person, I am of the opinion that the learned Magistrate in such circumstances was justified in holding the petitioner a juvenile which ought not to have been set aside by the appellate Court.

7. In the result, the application is allowed, impugned judgment dated 30th September, 2003 passed by the 2nd Additional Sessions Judge, Darbhanga in Criminal Appeal No. 16 of 2003 is set aside and that of the learned Additional Chief Judicial Magistrate restored.

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