

Mayank Rajput Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-04-1997

Reported in : 1998CriLJ2797

Judge : J.C. Mishra, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 24(1); West Bengal Children Act, 1959; Uttar Pradesh Children Act, 1951; Rajasthan Children Act, 1972 - Sections 3, 26 and 32; [Representation of the People Act, 1951](#) - Sections 36(7); Representation of the People (Amendment) Act, 1956; Evidence Act - Sections 35; Indian Penal Code (IPC) - Sections 302; [Constitution of India](#) - Article 39; Code of Criminal Procedure (CrPC)

Appeal No. : Crl. R. No. 1513 of 1996

Appellant : Mayank Rajput

Respondent : State of U.P.

Advocate for Def. : Ramji Saxena, A.G.A.

Advocate for Pet/Ap. : V.P. Srivastava and ;Viresh Mishra, Adv.

Disposition : Revision allowed

Judgement :

ORDER

J.C. Mishra, J.

1. This revision has been filed by the accused against the order dated 17th Oct. 1996 passed by III Additional Sessions Judge, Bijnor, rejecting the application that his case should be sent to the Court of Juvenile Judge for trial as he is a juvenile and in view of the provisions of Section of the Juvenile Justice Act (hereinafter called 'the Act') he cannot be tried with the other accused.

2. Accused Mayank along with other accused was named in the F.I.R. and he was committed to session. At the time of trial the accused-revisionist moved an application stating that he was born on 1st July, 1980 and, therefore, he had not completed 16 years of age on the date of occurrence of offence. The State Counsel contested the application stating that he had completed 16 years of age before the date of occurrence and thus he was not a juvenile. The learned Additional Sessions Judge gave opportunity to the parties to adduce evidence. The accused examined his mother Smt. Prem Bala, who stated that the date of birth of the accused was 1st July, 1980. The accused relied on the date of birth recorded in school certificate as also in the transfer certificate. On the contrary State relied on the copy of the bail order passed by the High Court rejecting the plea that the accused was below 16 years on the date of occurrence relying on an extract of the electoral roll according to which the accused had completed 16 years on the date of occurrence of offence. The learned Additional Sessions Judge on appreciation of the evidence held that the accused was not a juvenile and, therefore, he could not be tried separately. Felt aggrieved with the order the accused preferred this revision.

3. I have heard Sri Viresh Mishra, learned counsel for the revisionist, Sri Ramji Saxena, learned counsel for the complainant and learned Additional Government Advocate.

4. A perusal of the order passed by the learned Additional Sessions Judge would indicate that there was a controversy raised before him that the Sessions Judge had no jurisdiction, to enquire into the age of the accused. The learned Additional Sessions Judge held that he had jurisdiction to enquire into the controversy whether the accused was a juvenile or not. Both the learned counsel stated that

the view taken by the Additional Sessions Judge was correct. Thus there is no need to enquire into this controversy.

5. The second point that arises for consideration is the date on which the age of the accused should be considered. The learned counsel for the accused revisionist contended that the relevant date is the date of occurrence. On the contrary the learned counsel for the complainant contended that the relevant date is date of framing of charge or the date when the trial begins.

6. The learned counsel contended that even if the contention of the accused that his date of birth was 1 st July, 1980 is accepted still he is at present more than 17 years of age and as he has ceased to be a juvenile within the meaning of the Act there is no bar in his trial alongwith other accused by the Sessions Court. The learned counsel for the complainant placed reliance on decision of this Court in *Om Prakash Sharma v. State of U.P.* and another reported in 1997 JIC 379 (All) : 1997 Aall LJ 1091. The learned single Judge referred to Section 24(1) of the Act and concluded that the age of the accused should be determined on the date of framing of charge. The view taken by the learned single Judge does not appear to be correct as there is nothing to indicate in Section 24(1) of the Act that the accused should be juvenile on the date of framing of charge. Section 24(1) of the Act only provides that a juvenile cannot be tried along with the other accused. If the aforesaid view is taken it would create serious problems as an accused which is a juvenile can be denied the benefits of the Act by postponing the trial or framing of charge. This does not appear to be the intention of the Legislature. Article 39 of the [Constitution of India](#) provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

7. The learned Additional Sessions Judge referred to a decision of the Supreme Court in *Abdul Mannan v. State of West Bengal* reported in 1996 SCC (Cri) 197 : 1996 JIC 265 : (AIR 1996 SC 905) in support of his conclusion that if the accused had Crossed the age of juvenile offender and become adult the Sessions Judge is empowered to try him along with the other accused. In that case the accused were

under the age of 17 and 18 years on the date of commission of the offence of murder punishable under Section 302, I.P.C. Since they were children under the provisions of West Bengal Children Act 1959 they were required to be tried by the Juvenile Court but since no such Court had been constituted they could not be tried by such Court. West Bengal Children Act, 1959 was repealed by [Juvenile Justice Act, 1986](#). Under the Act trial of the juvenile offenders requires to be conducted by the Juvenile Court. The Supreme Court observed that since no Court has been constituted under the Central Act the necessary consequences would be that the Sessions Judge had to conduct the trial. The Supreme Court refused to give accused the benefit of the Juvenile Justice Act due to their own act of keeping the trial pending by protracting litigation. The Supreme Court refused to interfere with the observation that by passage of time the accused no longer remained to be juvenile offenders.

8. In the aforesaid case it was not held that the accused were below 16 years on the date of occurrence of offence and in absence of this finding they could not be given benefit of the Act. Since the accused were themselves responsible for the delay in trial by using superfluous pleas that the Additional Sessions Judge was not competent to try them as he was not 'Sessions Judge' within the meaning of Code of Criminal Procedure and, therefore, the Supreme Court refused to interfere with the order. This decision cannot be referred to as an authority for the proposition that even though an accused, who has not completed 16 years on the date of occurrence of offence, he will not be entitled to benefit of the Act, if on account of delay, he becomes a major.

9. The question what should be the relevant date for the determination of the age of the accused arose for consideration before the Supreme Court in *Bhoop Ram v. State of U.P.* 1989 SCC (Cri) 486 : AIR 1989 SC 1329 the question arose whether the accused who was less than 16 years on the date of occurrence could be given benefit of U.P. Children Act, 1951. The Supreme Court held that since the accused was below 16 years on the date of commission of offence he could not be sent to jail. Therefore, while maintaining the conviction the sentence awarded to him was quashed.

10. In *Umesh Chandra v. State of Rajasthan* 1982 SCC (Cri) 396 : AIR 1982 SC 1057 the Supreme Court held that the age of the accused should be reckoned with reference to the date of commission of offence. In that case it was argued at the Bar as to what is the material date which is to be seen for the purpose of the application of the Act. It was held that at the time of the occurrence the appellant was undoubtedly a child within the provisions of the Act and the further question if he could be tried as a child if he had become more than 16 years by the time the case went up to the Court does not survive, because the Act itself takes care of such a contingency. The Supreme Court referred to Sections 3 and 26 of the Rajasthan Children Act, 1972, which may be extracted thus :

3. Continuation of inquiry in respect of child who has ceased to be child - Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child.

26. Special provision in respect of pending cases - Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the children's Court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it has been satisfied on inquiry under this Act that the child has committed the offence.

11. A perusal of Section 3 and 26 of the [Juvenile Justice Act, 1986](#) would show that the same words, which were used in the Rajasthan Children Act had been reproduced, in that Act.

12. The Supreme Court then after extracting the aforesaid provisions observed that 'A combined reading of these two sections would clearly show that the statute takes care of contingencies where proceedings in respect of child were pending in

any Court in any area on the date on which the Act came into force. Section 26 in terms lays down that the Court should proceed with the case but after having found that the child has committed the offence it is debarred from passing any sentence but would forward the child to the Children's Court for passing orders in accordance with the Act.

13. The Supreme Court further observed that 'As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date, on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place: It is quite possible that by the time the case come up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the Sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

15. In view of the similar provisions in the Rajasthan Children Act and juvenile Justice Act, 1986, the observations made by the Supreme Court apply to the facts of the case before us. In a recent case the Supreme Court in *Bhola Bhagat etc. v. State of Bihar* JT 1997 (8) SC 537 : AIR 1998 SC 236 relying on a 3 Judges Bench Judgment in *Pradeep Kumar v. State of U.P.* gave benefit of Juvenile Justice Act to the accused considering their age on the date of occurrence. In view of the aforesaid discussion I find that the relevant date for determining the age to find whether the accused is juvenile is the date of occurrence.

16. We now proceed to examine whether the finding recorded by the learned Additional Sessions Judge is illegal and can be quashed in the revisional jurisdiction.

17. The learned counsels for the revisionist contended that the learned Additional Sessions Judge on the bail order passed by the High Court. There is no doubt that every Court before which the question arises whether the accused is a juvenile or not is empowered to record a finding, whether he had completed 16 years on the date of occurrence of offence. Since this question arose before the High Court and plea was raised that the accused being a juvenile could not be sent to jail the High Court was empowered to decide this plea. Any finding if recorded is binding on the Juvenile Court as well as on the Court of Sessions. It was held in *Naseem v. State of U.P.* reported in 1995 JIC 860 : 1995 All LJ 1173 that if the High Court or the Court of Sessions holds an inquiry and declares that the accused is a juvenile, it can make further order to separate the case of the juvenile and refer to the Juvenile Court and can also grant bail to the juvenile or refer the bail application to the juvenile Court for grant of bail. It was, however, clarified that if the High Court or the Court of sessions, as the case may be, immediately records its opinion without holding an enquiry on evidence on the basis of visual perception or on the basis of some document its opinion shall not be binding. In that case if referred to the juvenile court it can proceed to hold inquiry about age under Section 32 of the Act.

18. A copy of the bail order on which the Additional Sessions Judge has placed reliance has been placed on record. A perusal of the order would indicate that after referring to the voters list it was observed that in that document the age of Mayank has been shown as 18 years. The observations made in the bail order are quoted below :-

As regards the age of Mayank applicant No. 2 , the learned A.G. A. has referred to the voters' list (Annexure CA-5) wherein the age mentioned has been shown as 18 years.

19. After considering the other pleas the bail of the accused Mayank as also of the co-accused was rejected.

20. The aforesaid observation indicates that while disposing of the bail application the High Court has not recorded any finding but only a reference of the voters' list was made that according to the extract of the voters' list Mayank was of 18 years

age. In my opinion this observation could not be treated as finding. There was no bar for the Sessions Judge to take any independent view. The mere rejection of the bail without recording any finding as to the age of the accused could not be considered by the Additional Sessions Judge.

21. The next question that arises for consideration is what is the evidentiary value of the electoral roll regarding age.

22. The learned counsel for the complainant referred to a decision of Punjab and Haryana High Court in Bhagwan Dass Singla v. Harchand Singh AIR 1971 P & H 65. In that case interpreting Section 36(7) of the [Representation of the People Act, 1951](#) it was held that an entry in the electoral roll is conclusive proof that age of person whose name is entered is 21 years at least. Reliance was placed on a decision of the Supreme Court in Durga Shanker Mehta v. Thakur Raghuraj Singh AIR 1954 SC 250. The law in this regard was amended by Act 27 of 1956. The Legislature thought that the presumption authorised by these words was unduly wide, and so, by the amendment the prima facie and rebuttable presumption is now limited to the capacity of the person concerned to be treated as an elector and nothing more.

23. The presumption is, however, rebuttable. Moreover, this presumption cannot be made beyond the fact that person whose name is entered into the electoral roll possesses minimum qualification regarding age for the purpose of Representation of the People Act.

24. The aforesaid pronouncements relied on by the learned counsel for the complainant is of no avail for the present controversy involved before us. Even in accordance with the aforesaid cases no presumption can be made that the age mentioned in the electoral roll is correct or conclusive. It is matter of common knowledge that the entries in the electoral roll are made by the authorised persons on the basis of enquiries made by them. For practical purpose it is well known 1998 Cri. L.J./176 VIII that the dominating persons of the locality get the names of their supporters entered even though they are minors and have not attained the prescribed minimum age. Therefore, the entry in the electoral roll or of the age mentioned therein cannot be treated as conclusive piece of evidence. Utmost it

can be considered along with other evidence on record.

25. The learned Additional Sessions Judge committed illegality in relying on the observation made by the High Court in the bail order and also in giving undue importance to the electoral roll.

26. We now proceed to examine the evidentiary value of the High School certificate and scholar register. There is no doubt high school certificate is admissible under Section 35 of the Evidence Act. The learned Additional Sessions Judge seems to be of the view that since the date of birth is mentioned in the high school certificate on the basis of the entries made in the scholar register and, therefore, the original document should be produced and in its absence the entry made in the high school certificate cannot be relied on. The view taken by the learned Additional Sessions Judge does not appear to be correct. If the high school certificate is admissible there shall be presumption as to its correctness and also of the fact that it was prepared on the basis of the school leaving certificate or on the basis of the entry made in the scholar register. If the either side desires to challenge the entry the burden will be on it, it can either produce scholar register or initial application by which the scholar was admitted in the register to disbelieve the date of birth mentioned in the high school certificate.

27. In the case before us the applicant has also produced attested copy of the transfer certificate wherein the date of birth of the applicant was mentioned as 1 st July, 1980. The same date was mentioned in the high school certificate.

28. The learned Additional Sessions Judge has placed reliance on a decision of this Court in Hariram Chaudhary v. State of U.P. 1990 (21) ACC 99 in rejecting the entry on the ground that since scholar register has not been produced in this Court, in its absence, high school certificate cannot be relied on. The reading of the aforesaid pronouncement does not indicate that unless extract of scholar register is brought on record the high school certificate cannot be relied on. In the aforesaid case the certificate containing the marks obtained by the applicant indicating that the birth of the accused was 16th July, 1978 as also extract of scholar register and transfer certificate was produced. The same date of birth was recorded in all the documents. The date of birth as recorded in these documents

was accepted rejecting the age mentioned in the family register. In this case it was not held that unless the high school certificate or the mark sheet, is accompanied with extract of scholar register the date of birth shown in the high school Certificate cannot be relied on and the inference as drawn by the learned Additional Sessions Judge does not appear to be correct.

29. The learned counsel for the revisionist referred to the following pronouncement wherein the Hon'ble G.S.N. Tripathi, J. considering the date of birth as mentioned in the high school certificate has held that accused to be juvenile. Janardan Pandey v. State of U.P. 1997 (34) ACC 312. Pankaj Kumar Tripathi v. State of U.P. 1996 (33) ACC (H) 44. Raju alias Raj Kumar v. State 1996 (33) ACC (H) 44 (sic). Fanu alias Man v. State 1996 (33) ACC 690 : 1996 All LJ 1912.

30. In Bhoop Ram v. State of U.P. 1989 SCC (Cri) 486 : AIR 1989 SC 1329 the Supreme Court observed that in absence of any material to throw doubts about the entries in the school certificate it cannot be rejected on the basis of surmise that generally parents understate the age of their children at the time of admission to school.³¹.

31. In Umesh Chandra v. State of Rajasthan 1982 SCC (Cri) 396 : AIR 1982 SC 1057 the Supreme Court held that 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 said to be reliable because it can be prepared at any time to suit the needs of a particular situation.

32. In the case the admission form under which he was admitted to Class III in St. Teresa's Primary School, Ajmer the date of birth was shown as June 22, 1957. The form contained the seal of the school. It was proved that the form was maintained in the ordinary course of business and was signed only by the parents. The Supreme Court held that since the document was regularly kept in discharge of official duty, the document is admissible under Section 35 of the Evidence Act. Reference was made to earlier decision of the Supreme Court in Mohd. Ikram Hussain v. State of U.P. (1964) 5 SCR 86, .10 : AIR 1964 SC 1625 : 1964 (2) Cri

LJ 590 wherein certified copies from school registers were produced along with the affidavit of the father stating the date of her birth. The Supreme Court held that these amounted to evidence under the Indian Evidence Act and the entries in the school registers were made ante item motam.

33. The Supreme Court in Umesh Chandra's case (supra) also observed that this topic has been elaborately dealt with particularly in regard to the entries in school register and the admission form in the case of Abdul Majeed v. Bhargavan AIR 1963 Kerala 18. The Supreme Court then proceeded to examine that since the school, where the documents were maintained was an English Public School and the record maintained by it was undoubtedly unimpeachable and authentic and could not be suspected or presumed to be tampered with. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth or for that matter the exact date on which he was born and there could not have been any motive on the part of parents of the accused to give a false date of birth.

34. In Amrutlal Somchwar Joshi v. State of Maharashtra (II) 1994 SCC (Cri) 1604 : AIR 1994 SC 2516 it was held that school leaving certificate can be acted upon with reference to the date of birth given in the certificate.

35. The learned counsel for the applicant contended that the learned Additional Sessions Judge has not analysed the evidence of the mother of the applicant in proper perspective and he rejected her evidence on irrelevant considerations viz. She could not produce horoscope; she could not produce the bit of paper on which she had noted the date of birth; she could not remember the date of marriage of another daughter. The learned counsel contended that the learned Sessions Judge has given undue importance to the order passed by the High Court rejecting the bail of the accused.

36. On consideration of the entire facts and circumstances and the submission of the learned counsel for the parties I am of the view that the learned Additional Sessions Judge has not decided the matter in proper perspective and since he committed illegality in considering the bail order the order deserves to be set aside. The learned Additional Sessions Judge should reconsider the matter in

proper perspective.

37. The revision is allowed. The impugned order is set aside. The learned Additional Sessions Judge shall after re-hearing the parties and considering the decisions referred to above and other pronouncements which are placed before him will decide the application afresh. In case he finds that the revisionist was a juvenile on the date of occurrence he shall separate his case and send him to the juvenile court for trial. However, if he finds that the accused was not juvenile and he had completed the age of 16 years on the date of occurrence he shall proceed with the trial.

38. Let a copy of this order be sent to the court concerned within a week.

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