

Sunil Kumar Vs. State of U.P.

Sunil Kumar Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/489075

Court : Allahabad

Decided On : Jul-25-2000

Reported in : 2000CriLJ4687

Judge : B.K. Rathi, J.

Acts : [Juvenile Justice Act, 1986](#) - Sections 37; Children Act; Indian Penal Code (IPC) - Sections 34, 37, 302 and 307

Appeal No. : Crl. Revn. No. 332 of 2000

Appellant : Sunil Kumar

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.R. Chaudhary, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

B.K. Rathi, J.

1. Revisionist, Sunil Kumar is an accused in case crime No. 405 of 2000, under Section 307, 302/34, IPC police station Khurja Nagar, district Bulandshahar. He

moved an application before the Juvenile Judge alleging himself to be juvenile. The learned Juvenile Judge rejected the application by order dated 30-11-1999, with the conclusion that the revisionist is not a juvenile. Against that order, the revisionist preferred Criminal Appeal No. 58 of 1999 under Section 37 of the Juvenile Justice Act. The appeal was also dismissed by Sessions Judge, Bulandshahar on 6-1-2000 and the contention of the revisionist is that he is juvenile was also not accepted by the learned Sessions Judge. Aggrieved by the order, the present revision has been preferred.

2. I have heard Sri D. R. Chaudhary, learned counsel for the revisionist and the learned A.G.A.

3. It is contended that the incident took place on 10-8-1999. The date of birth of the revisionist is 22-6-1984 and he was below sixteen years of age at the date of the incident. In support of the argument learned counsel for the revisionist has filed the copy of the scholars register of Junior High School, Khurja, wherein his date of birth is mentioned at 22-6-1984. According to the said certificate he was admitted in the school on 3-7-1996 in class-VIth and passed class VIIIth on 20-5-1999. The marksheet of class VIIIth has also been filed. The clerk of the said school, Sri Anil Kumar Kaushik was also examined to prove the said certificate. He has verified the entries of the copy of the scholar register from the original register and narrated the above facts.

4. The learned Juvenile Judge also sent the revisionist for medical examination for assessment of age. On the basis of radiological tests the age of the revisionist was found to be seventeen years. This evidence was considered and the learned Magistrate has also made an observation that the revisionist appears to be above sixteen years of age. Therefore, he was not found to be a juvenile.

5. The contention of the learned counsel for the revisionist is that the entry of the scholars register should prevail over the medical evidence which is only an opinion evidence. The learned counsel in support of the argument has referred to the case of Bhoop Ram v. State of U.P. 1989 (3) SCC 1 : 1990 All LJ 65. In this case, it was found that the date of birth mentioned in the school certificate shows the age of less than sixteen years at the time of the incident. It was observed by the Apex

Court that in the absence of anything showing that, the entries in the certificate did not relate to the accused or were incorrect, the same cannot be rejected on the basis of surmise that generally parents understate the age of their children at the time of admission in the school. It was further observed that medical evidence is an opinion and in the absence of any other material medical opinion should not prevail over the entries in the school certificate.

6. The other case referred to is *Bhola Bhagat v. State of Bihar* 1997 (8) SCC 720 : AIR 1998 SC 236. This case is not material for the controversy before me. It was observed that the benefit of the Children Act should not be refused on technical grounds if the accused take a plea that he was child on the date of incident should not be given an opportunity to establish the case and a positive finding regarding the age of the accused should be recorded.

7. The case of *Bhoop Ram* referred to by the learned counsel for the revisionist was decided by the Apex Court in the year 1989 by a Division Bench. Later on *Brij Mohan Singh v. Priya Narain Singh* was decided by the Bench of five Hon'ble Judges of the Apex Court reported in AIR 1965 SC 282. The following observation was made by the Apex Court :

In actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The Court of fact cannot ignore this fact while assessing the value of the entry and it would be improper for the Court to base any conclusion on the basis of the entry, when it is alleged that the entry was made upon false information supplied with the above motive.

8. The other important decision on the point which has been referred by the learned Sessions Judge in his judgment is *Pankaj Kumar Tripathi v. State of U.P.* 1998 (2) JIG 965 (All). In this case this Court accepted the plea of the accused that he is a juvenile. The complainant *Deoki Nandan* filed criminal appeal No. 1887 of 1997 in the Hon'ble Supreme Court. The matter was remanded back by the Hon'ble Supreme Court with the direction that the question of juvenile should be considered in the light of the evidence adduced by the parties and not merely on

the basis of the entry recorded in the scholar register of the school.

9. In view of the above decision, the revisionist cannot be held to be juvenile on the basis of the entry in the scholar register, which also does not appear to be genuine. The revisionist has taken admission in class VIth on 3-7-1996, i.e. at the age of twelve years. No documents were filed to show the date of birth as mentioned when the revisionist took admission in a school for the first time. By the medical evidence and by appearance of the revisionist the trial Court concluded that the revisionist is not a juvenile. There is no sufficient reason to interfere in the order. The revision is dismissed.

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