

**Vikrant Kumar Alias Sonu Vs. State of U.P. and anr.**

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**Court :** Allahabad

**Decided On :** Jul-19-2002

**Reported in :** 2003CriLJ1094

**Judge :** S.K. Agarwal, J.

**Acts :** [Juvenile Justice Act, 1986](#) - Sections 2A

**Appeal No. :** Crl. Revn. No. 1417 of 2001

**Appellant :** Vikrant Kumar Alias Sonu

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** A.G.A

**Advocate for Pet/Ap. :** S.S. Tripathi and ;A.P. Tiwari, Advs.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**S.K. Agarwal, J.**

1. This revision has been filed against the appellate order passed by the Additional District Judge, Gorakhpur in Criminal Appeal No. 33 of 2000, arising from the order dated 17-10-2000 passed by the Juvenile Judge. Gorakhpur in Crime Case

No. 277 of 2000 (State v. Vikrant alias Sonu) under Section 377/511, I.P.C. Police Station Badhalganj, District Gorakhpur.

2. On 7-8-2000 a report was lodged against the applicant for an offence under Section 377/511, I.P.C. PS Badhalganj. The case was registered as Crime No. 277/2000/-. When the charge sheet was submitted in court the applicant claimed himself to be a juvenile and sought the benefit of Juvenile Justice Act thereby desired to be tried by a Juvenile Judge. In support of its case he had filed a High School Certificate issued from the Board of High School and Intermediate Education, U.P. Allahabad, In this certificate the date of birth of the applicant was mentioned as 1-1-85. The informant opposite party No. 2 strongly contested the claim of his being a juvenile in revision and advanced the submission that he appeared in High School examination in 1998 from National Inter College Badhalganj. The said school has not issued a certificate to him on his demand. It is demanding an appropriate order from the Court for issuing the same to him. He made an application before Juvenile Judge for giving him necessary order in this regard. An order was given but despite that the copy of school leaving certificate was not issued to him. This fact was brought to the notice of the court by filing an application by the informant opposite party No. 2. Despite that the court rejected his plea on the ground that no power is available to it under the law to force the Principal of National Inter College, Badhalganj to send a copy of the same or to direct him to appear in this court along with the necessary documents. The applicant was subjected to medical examination also. The medical examination report shows that he was about 17 years at the time of his medical examination. The complainant-informant had also filed a copy of extract of Parivar Register. According to which the year of birth of this applicant was shown 1980. This had been challenged by the father of the accused by filing an affidavit wherein it has been averred that in the copy filed by the informant the date of birth was wrongly shown. Apart from it the date shown therein is that of his eldest son and not of this applicant. No counter-affidavit was filed by the informant to the affidavit filed by the father of this applicant.

3. In these circumstances the Juvenile Court preferred to accept the High School Certificate produced by the father of the applicant as admissible in evidence.

Placing the reliance on the documents he declared the applicant a Juvenile. In the impugned appeal the above order was disturbed.

4. It was seriously contended by the complainant informant opposite party No. 2 that the trial Judge has erred in not making a serious endeavour to call for the record from the National Inter College, Badhalganj from where this applicant had appeared in High School examination and failed. It would have furnished substantive evidence. In that certificate his year of birth is shown as 1982. The trial Court had failed to appreciate it. But there is a very important circumstance which goes in favour of the applicant that his father had filed an affidavit challenging the date of birth shown in the extract of Parivar Register filed by opposite party No. 2 before the Juvenile Court and adverted certain facts in order to prove the applicant a juvenile. As no counter-affidavit was filed to the affidavit by the opposite party No. 2 alleging that the entries of extract are fake and were procured to deny the applicant benefit of being a Juvenile.

5. In these circumstances the trial Court thought it better to place reliance on the High School Certificate produced by the applicant.

6. I have perused both the judgments very carefully and I am of the opinion that this approach could not be termed in any manner perverse or prejudicial to the interest of the complainant. The most crucial fact, which may have impressed the formation of the opinion, is that failure to file any response to an affidavit disputing entries of extract of Parivar Register filed by him. It makes it clear that the informant opposite party No. 2 had been manipulating the evidence against the applicant.

7. Now in this very context his submission that the applicant appeared in High School Examination from National Intel-College, Badhalganj in the past and failed is examined in proper perspective then it will not be difficult to discern that this too was used as a camouflage to create doubt in the mind of the court regarding the authenticity of the date of birth shown in the High School certificate. A Principal has no courage and sagacity not to comply with the order of a court therefore the applicant made subsequently a statement that the Principal had declined to issue a copy despite the court's order. It is, in my opinion used as a device by opposite

party No. 2 to defeat the claim of the applicant. The medical opinion it is common knowledge varies by two years either way. As the law stands the interpretation of the beneficial provisions to the accused should be adhered to by the court strictly. I find no error in the impugned judgment.

8. I am not inclined in view of the fact and circumstances discussed above in favour the applicant that he in all likelihood was a Juvenile when he committed the offence or even when he made his application for such a declaration before the court.

9. In these circumstances adverted to above I find force in the submissions. This revision deserves to be allowed. It is accordingly allowed.

10. The appellate Court's order dated 29-3-2001 is hereby set aside. The order dated 17-10-2000 is hereby restored. The applicant is declared a juvenile.

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