

**Sunil and Another Vs. State of M.P.**

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**Court :** Madhya Pradesh

**Decided On :** Sep-29-2000

**Reported in :** 2001CriLJ1862; 2001(2)MPHT102

**Judge :** Mr. S.C. Pandey, J.

**Acts :** [Juvenile Justice Act, 1986](#) - Sections 7(2) and (3) and 32(1) and (2); [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307, 323 and 506; Arms Act - Sections 25-B

**Appeal No. :** Criminal Revision No. 1303/2000

**Appellant :** Sunil and Another

**Respondent :** State of M.P.

**Advocate for Def. :** Ms. C. Sharma, Panel Lawyer

**Advocate for Pet/Ap. :** Shri S.L. Kochar, Adv.

**Disposition :** Criminal revision partly allowed

**Judgement :**

ORDER

**S.C. Pandey, J.**

1. With the consent of learned counsel for the parties, this revision is being heard and disposed of finally.
2. This revision is directed against the order dated 29-8-2000 passed by 1st Additional Sessions Judge, Chhatarpur while deciding the Bail Application Nos. 1042 and 1056 of 2000.
3. A charge-sheet has been filed against the applicants under Sections 302, 307, 323 and 506 Part-II read with Section 34 of the Indian Penal Code and also under Section 25B of the Arms Act as per Crime No. 54/2000 by Police Station, Chandla, District Chhatarpur.
4. It appears that the case of the applicants is that they are juveniles as they are below 16 years of age. This plea was taken during the decision of the bail applications aforesaid. The learned Additional Sessions Judge, who is trying the case, had observed that the learned Sessions Judge had earlier directed that there should be an enquiry regarding age of the applicants. The learned Additional Sessions Judge was of the view that the ossification test established the age and the medical report of the doctor showed that the applicants could not be held to be juveniles. The learned Additional Sessions Judge relied on the fact that the applicants had shown themselves in the bail applications their age as 16 and 17 years.
5. The power to make enquiry in order to find out, if a person is juvenile, is vested in the competent authority. Section 32(1) of the [Juvenile Justice Act, 1986](#) (henceforth 'the Act') prescribes the procedure for determining the age after due enquiry. It requires the competent authority to determine the age of a person produced before it otherwise than as a witness in order to determine if he is a juvenile. The procedure prescribed is by way of enquiry after recording evidence in disputed case. This procedure is applicable to neglected juveniles as well as juvenile delinquents. Sub-section (2) of Section 32 of the Act raises a presumption regarding the age of the person if determined by the competent authority. The competent authority has been defined to mean that a Board in relation to a neglected juvenile and a Juvenile Justice Court in relation to a delinquent juvenile and in absence of the constitution of the aforesaid authorities, the Court that

exercised the powers of Board or Juvenile Justice Court in accordance with sub-section (2) of Section 7 of the Act. Apart from that, Section 7(3) of the Act has conferred the same powers on the High Court and the Court of Session when a proceeding comes before them in appeal or revision or otherwise. It is very clear from the use of word 'otherwise' in sub-section (3) of Section 7 of the Act that in case a matter is pending before the Court of Session for trial, then it is authorised to exercise the powers conferred upon the Board or Juvenile Justice Court under Section 32(1) of the Act. In other words, power under Section 32(1) of the Act could be exercised by the Court of Session in a pending trial in respect of the persons charged with an offence.

6. The learned Additional Sessions Judge, however, was wrong in basing his finding regarding the age on the basis of ossification test. Section 32(1) of the Act requires the competent authority to determine the age of an accused juvenile after making an enquiry and after recording the evidence as may be necessary for determining the age. The ossification test is not conclusive of the matter. An enquiry has to be made and the applicants are entitled to an opportunity of leading the evidence regarding their date of birth for proving that they are below 16 years of age and can claim the benefit of the Act as juveniles. However, it is primary duty of the court to find out whether the applicants are covered by the Act or not. In a given case, a juvenile may not be able to lead any evidence.

7. Accordingly, the impugned order dated 29-8-2000, so far as it relates to the finding regarding age of the applicants, is hereby set aside and the case is remitted back to the learned Additional Sessions Judge for making an enquiry after giving the applicants an opportunity to lead their evidence on the matter of their age. The learned Additional Sessions Judge is required to record evidence which he considers necessary for determining the true age of the applicants, even if the applicants do not lead any evidence. The Court of - Session is required to make an enquiry exercising the powers conferred upon the Competent Court under Section 32(1) of the Act. The Additional Sessions Judge should realise that the Act is also for the benefit of the juvenile delinquents and he cannot leave the matter of proof of age entirely upon juveniles. Here the Court must do participatory justice and exercise suo motu powers rather than be a silent spectator. Consequently,

this revision is allowed to the extent indicated above and the case is remanded to the learned Ist Additional Sessions Judge, Chhatarpur. The M. (Cr.) P. No. 1284/2000 for grant of stay of further proceedings is hereby dismissed.

8. Criminal Revision partly allowed.

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