

Md Taslim Alias Taslim Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Nov-19-2015

Appellant : Md Taslim Alias Taslim

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 775 of 2015 Md. Taslim @ Taslim, son of Md. Aslam, resident of at- Rahmatganj, PO Bhuli, PS Bhuli (Bankmore), District Dhanbad . Petitioner Versus The State of Jharkhand Opposite Party ----- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : Mr. Pratiush Lala, Advocate For the State : Mr. Rakesh Kumar, APP ----- 08/Dated:

19. 11/2015 The present revision is directed against the order dated 10.06.2015 passed by the Additional Sessions Judge-VIII, Dhanbad, in S.T. case no. 127 of 2015 whereby the plea of juvenility of the petitioner was rejected.

2. The contention of the learned counsel is that from the impugned order it would be evident that the petitioner was examined by the medical Board constituted in terms of the provisions of Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, for determination of the age, since no documents were produced to support the plea of juvenility as prescribed under Rule 12(3)(a) of the Rules, 2007. It is submitted that the court below, without assigning any reasons, has held that on the date of occurrence, i.e., on

22.12.2014, the petitioner was aged more than 18 years. It is argued that such finding of the trial court is not in consonance with the material facts available on record because as per the medical report dated 19.02.2015, the age of the petitioner was assessed as more than 19 years and Rule 12(3)(b) contemplates the determination of age by giving benefit of one year on the lower side. During enquiry, under Section 7(A) of the J.J.

Act, 2000, the Doctor stated that more than 19 years means 19 years and one hour. It is argued that if the deposition of the Doctor is accepted to be true, then on giving relaxation of one year, the age of the petitioner can be assessed around 18 years on 19.02.2015, hence, on the date of occurrence, i.e., on 22.12.2014, the petitioner was aged below 18 years. It is argued that the ratio laid down by the Honble Supreme Court in the case of Durga Ram @ Gunga Vs. State of Rajasthan (2015) 1 JLJR414(SC) is applicable to the facts of the present case for determination of the age. Learned counsel has also referred to various decisions of this court on the point of determination of the age of the juvenile, reported in -2-(2011) 3 JLJR (Jhr) 355, (2011) 2 East Cr. C. 87 (Jhr) and (2007) 1 JLJR (Jhr) 427.

3. Learned APP has contended that the learned trial court has relied on the decision of this Honble court in the case of Deepak Kumar Singh Vs. State of Jharkhand and held that even if the age of the petitioner is assumed to be 19 years as on 19.02.2015 then also on the date of occurrence his age was more than 18 years. It is submitted that the impugned order is in consonance with law and does not require any interference by this court.

4. Heard. On perusal of the impugned order, it is abundantly clear that the documents, as required under Section 12(3)(a), i.e., the matriculation certificate, the certificate of school first attended (other than the play school) or the birth certificate issued by the Municipality/Corporation or Panchayat of the area, was not produced, accordingly, the court below in terms of Rule 12(3)(b) directed the determination of the age of the petitioner by constitution of a medical Board. The medical report dated 19.02.2015 was submitted wherein the age of the petitioner was assessed as 19 years and above and the Doctor has deposed that 19 years

and above can mean 19 years and one hour. The date of occurrence is 22.12.2014 and the medical examination was done on 19.02.2015. The common practice of assessing the age on the basis of medical report is by giving the benefit of two years on the lower side however, Rule 12(3)(b) mandates that in case of medical report a benefit of one year is to be given. In the present case the learned trial court has arrived at the finding that the petitioner was aged more than 18 years on 22.12.2014 without assigning any cogent reason as to how it has reached to such a conclusion. It is evident that benefit of one year as mandated under Rule 12(3)(b) has not been considered by the learned lower court. In the case of *Durga Ram @ Gunga* (supra) the Honble Supreme Court has observed, in para-15 as follows:

1. that apart even if the age of the appellant was determined by the upper extremity limit i.e., 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but -3- such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.

5. It is also relevant to point out that in the case of *Hari Ram Vs. State of Rajasthan* (2009) 3 JLJR SC123 the Honble Supreme Court has held that when a claim of juvenility is raised and on evidence available if two views are possible, court should lean in favour of holding the offender to be a juvenile in borderline cases.

6. Therefore, considering the settled proposition of law and the mandate of the provisions under Rule (3)(b), it is held that the petitioner was aged below 18 years on 22.12.2014 i.e., on the date of occurrence, and was a juvenile on the alleged date of occurrence. In view of the discussions made hereinabove the impugned order is set aside.

8. The trial court is directed to transmit the record of the petitioner to the J.J.

Board for the needful.

9. In the result the revision stands allowed. (Amitav K. Gupta, J.) Tarun/-

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