

Sahib Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/683673

Court : Delhi

Decided On : Aug-10-1990

Reported in : 1991CriLJ687

Judge : M.K. Chawla, J.

Appeal No. : Criminal Revision No.140/89; Crl. Misc. (Main) 1313/86

Appellant : Sahib Singh

Respondent : State

Advocate for Def. : Ms. Usha Kumar and ; Ms. Vandana Sagar, Advs.; H.R. Khan

Advocate for Pet/Ap. : Bawa Gurcharan Singh, Adv

Judgement :

ORDER

1. Sahib Singh, petitioner, was challenged to face trial for committing the offences punishable under S. 302, IPC and S. 27 of the Arms Act for causing the death of one Mukesh by stabbing on 27-7-88.

2. During the pendency of the proceedings in the Court of the Metropolitan Magistrate, the petitioner claimed to be tried by a Juvenile Court, being below the age of 16 years on the date of commission of the offence The prosecution contested the application by asserting that the petitioner was more than 16 years

of age and as such, is liable to be proceeded with by the regular court. By order dated 13-10-89, H. C. Goel, J. directed Shri P. D. Gupta, M.M. to hold an enquiry under S. 32 of the Juvenile Justice Act, as to whether the petitioner was a minor on the date of the commission of the offence or not. This order was passed while considering the petitioner's application for his release on bail.

3. In the enquiry proceedings, the prosecution produced three witnesses while the petitioner examined four witnesses to support his version. The learned Metropolitan Magistrate vide order dated 15-12-88, gave a finding that the petitioner Sahib Singh was above the age of 16 years and was not 'juvenile' on the date of commission of the offence. Feeling aggrieved of this order, the petitioner filed the appeal which was heard and disposed of on 12-5-89 by Shri M. R. Khan, A.S.J. Delhi, holding that he does not find any reason to differ from the finding recorded by the learned M.M. and that the petitioner at the relevant time was around 20 years of age.

4. The petitioner has challenged the correctness of the finding of the Addl. Sessions Judge in this revision petition.

5. I have heard the arguments of the learned counsel for the parties and have also perused the record. It is, purely a question of fact to be decided on the evidence of the witnesses and the documents proved on record. Both the courts below have mainly relied upon the evidence of CW-1 H. J. Solomen, Head Master St. John Secondary School, Khera Kurd, Delhi, where the petitioner was admitted for secondary school education, and the evidence of CW-1 Dr. Murari Prasad Sharangi, Asstt. Professor, Department of Forensic Medicines, Maulana Azad Medical College who along with his colleague Dr. P. C. Dixit, Associate Professor, Forensic Medicines (which constituted the Medical Board) examined Sahib Singh for determining the bony age. In his report Ex. CW-1/A Dr. Sarangi has opined that the petitioner was 20-22 years of age at the time of the commission of the offence.

6. The contention of the learned counsel for the petitioner is that the affidavit Chander and the admission form Ex. CW-1/A produced by Shri H. J. Solomen is inadmissible in evidence, inasmuch as nobody has come forward to prove the same, as required under the Evidence Act.

7. There is substance in his contention. This admission form bears the signature of one Chander, the father of Sahib Singh. Chander has been proved to be an illiterate person by the evidence of almost all the witnesses. According to them, Chander was an illiterate person who used to put his thumb-marks on the documents. No witness from the side of the prosecution has been produced to state that Chander was literate and that they had seen him sign and write on any document. Admittedly, H. J. Solomen was not present at the time Chander is alleged to have signed the affidavit and the admission form. Nobody has attested the affidavit. No other teacher or clerk concerned who allegedly received the admission form has come forward to state that Chander was the father of the petitioner, who had come to get his son admitted, by submitting the admission form duly signed by him, or that they identify his handwriting.

8. During the course of cross-examination, H. J. Solomen the Principal of the School was frank enough to admit that there are interpolations in the said document. The relevant part of his cross-examination is as under :-

'That the handwriting of the admission form at place 'A' on CW-1/A is different from the writings encircled marks A and B. Similar is my reply with regard to the writings on Mark A and B on C.W.1/A and B. The applicant used to bring form and get it filled from any person, being illiterate. It is correct that the writing on the date of birth is different from the other writing and the ink is also different. It is correct that the affidavit was not attested even by me and there is no date of admission mentioned on the affidavit.'

In this view of the matter, it is difficult to rely on the so-called admission form and the affidavit to record date of birth of the petitioner as 12-2-68, mentioned therein.

9. At this stage, we may also note that St. John Secondary School of which Shri Soleman is the Headmaster is a private educational institution and no presumption of authenticity can be raised with regard to this document, particularly when it is not maintained in the regular course of business. The Register containing these admission forms is neither page-marked nor is there any index and are kept in loose sheets. In view of these circumstances, no reliance can be placed on such a document to fix the age of the petitioner.

10. The evidence of Dr. Murari Prasad Sarangi, is contradictory in nature and not Worthy of any reliance. He is not an expert Radiologist. In fact,, he has never worked in the Radiological Department of Maulana Azad Medical College Hospital. Even though the petitioner was referred to the Radiological Department for taking the X-Rays, etc. but charge of the Radiological Department to give his opinion about the ossification of the bones of the petitioner which opinion is very much relevant to determine his age. The doctor also admitted that he did not refer the petitioner to the Orthopedic Department to find out if he was suffering from any bony disease.

11. The case of the learned Counsel for the petitioner is that Sahib Singh is an outstanding athlete and the dietary, hereditary and climatic conditions have a bearing on the development of bones, and the ossification takes place much earlier in a muscular body than the ordinary one. Dr. Sarangi even though admitted this suggestion, but did not put any question to the petitioner on this aspect at the time of his examination, on account of the paucity of time.

12. Similarly, Dr. Sarangi admitted that the pubic hair of the petitioner were dark brown in colour and moderately grown which are normally found on the person of adolescent age of 14-15/15-16.

13. Learned Counsel for the petitioner then contended that Dr. Sarangi did not refer Sahib Singh to the Department of Dentistry for their expert opinion which is one of the vital tests to determine the age of the particular person. The submission is that according to the report, CW-1/A, the X-Ray of the jaw showed the presence of shadows of the third molar teeth with incomplete root canncification, meaning thereby that it has not yet erupted. It can erupt at the age of 17 years as per the medical opinions expressed in the book written by Modi, Medical Jurisprudence and the other written by Gray. Dr. Sarangi admitted this fact. According to him, the time of eruption of the third molar teeth or the wisdom teeth is most uncertain, but it starts erupting from the age of 17 and completes by about 26 years of age. In view of this admission it can safely be said that Sahib Singh was less than 17 years of age at the time of his examination.

14. Learned Counsel for the petitioner then pointed out that Dr. Sarangi agreed With the opinion of Modi, that the four middle pieces of the sternum which constitute its body, fuse with one another from below upward between 14 and 25 years of age. For that reason the doctor in his report has not used the word 'completely' meaning thereby that the age of Sahib Singh at the time could be between 14 and 25 years. Surprisingly, Dr. Sarangi has not attached along with his report the X-ray plates for the benefit of the Court for making its own observation about the fusions of various joints.

15. Dr. Sarangi also agreed with the observation of Modi that distal end of the radius, fuse with the shaft of the radius and distal end of the ulna, fuse with the shaft of the ulna between the age of 15-16 with a variation of six months, which in some exceptional cases can be of one year. This is also a factor which goes a long way to fix the age of Sahib Singh i.e below 16 years, on the day of the incident.

16. In the end, the doctor conceded that his report does not bear the signature of P. C. Dixit, the other member of the Medical Board. His Explanationn in his own words is :

'Yes, it is correct that the report bears the signature of Dr. P. C. Dixit in para A at place A, dated 16-3-89 when we had taken up the general physical examination and the dental examination of the individual. At the later date, when I took up X-ray examination only, he could not be there as he had gone out of station (Jammu & Kashmir) to take up an examination there at Srinagar Medical College and taking the reminders from the Hon'Ble Court, and because of the urgency and being directed by my Head of the Department, Prof. Bishnu Kumar, I had to finalise the report and hence Dr. Dixit could not put his signature at the end.'

The cumulative effect of going through the evidence of Dr. Sarangi leaves no doubt in my mind that his opinion on many aspects is sometimes against the medical observations of well known writers like Modi and Gray, and many a time he has contradicted himself from his report when confronted with these observations. He has unfortunately not tagged along with his report, the X-ray plates of the various examinations conducted on the person of Sahib Singh, on the

plea that he did not think it essential to send those plates with his report. According to him, there was no space in the form, to make further comments on its results. This has prevented the Court from looking into those X-ray plates and form its independent opinion and to test the opinion of Dr. Sarangi, if at all it is in accordance with the X-ray examination of the various parts of the body of Sahib Singh or not. This has created a doubt in my mind if at all such an opinion placing the age of Sahib Singh between 20-22 years can be relied upon to determine his exact age.

17. On the other hand, CW-2, Dharam Singh, Headmaster of M.C. Primary School, Khera Khurd has proved on record the admission form of Sahib Singh when he was got admitted in the first class. The said application and the affidavit, according to this witness, were filled up by Sant Ram, brother of Sahib Singh. As per this record, the date of birth of Sahib Singh has been mentioned as 1-1-1973. This admission form has been duly entered in the register at Seriall No. 1846 on 18-7-79, which is maintained in the regular course of business. Sahib Singh left the institution in the year 1984 after passing 5th class. This certificate is the first in time when Sahib Singh was admitted in the school. Shri Dharam Singh was also the Sports in charge of the school games. Sahib Singh in those days was taking part in the Mini school games, Inter-State School competitions and in the mini national school games as a minor. There is no worthwhile cross-examination of this witness to challenge the authenticity of this admission form, Ex. CW-2/A.

18. Shishu Pal was the Sports Teacher in the said primary school at Khera Khurd, where Sahib Singh was the student and one of the outstanding sportsmen, participating in the category of minors. According to Shishu Pal, DW-2, Sahib Singh was taking part in. 2the games while he was 13 years old. If he had been over age, the competing schools could have taken objection but in the case of Sahib Singh, at no point of time, in any competition of Inter School, Zonal or Inter-Zonal School, games, any objection to his participation was ever taken. He corroborated the statement of Dharam Singh, the Headmaster of the school to say that the age in the admission form of Sahib Singh as 1-1-73 was correct and on that basis, he was allowed to take part in the national games. That certificate was always admitted to be a genuine one, giving the correct age of the participant.

19. After coming out of the primary school, Sahib Singh joined 6th class in T.G.T. Govt. Boys School, Khera Khurd and his admission form was entered in the Register of the school at Serial No. 1786 on 17-4-84. In this admission form, the date of birth of Sahib Singh is shown as 1-1-1973. According to Ranbir Singh who brought the summoned record from the T.G.T. School stated that the name of Sahib Singh was struck off from 6th class on 8-12-84 due to his long absence. He proved the school leaving certificate Exhibit PW-3/C bearing the same age as shown in the admission form of Sahib, Singh. This witness was responsible for maintaining the record of admission forms of the students up to middle class.

20. DW-1 Sant Ram is the elder brother of Sahib Singh. He in fact got Sahib Singh admitted in the primary school of the Corporation wherein he correctly recorded his date of birth i.e. 1-1-73. According to him, their father was absolutely illiterate and he used to put his thumb impression only. He was a sweeper by profession and during his life time, Chander never signed any paper or form. Sant Ram denied the signature of his father on Ex. CW-1/C, the admission form alleged to have been maintained in the St. John Secondary School. According to this witness, Sahib Singh was never a student of that school. He in fact joined the primary school, where he studied up to 5th class and then joined T.G.T. school for one year and left that school because of long absence. Sant Ram gave in minute details of the age of his brothers and sisters. Almost similar is the statement of DW-4 Dhanpati, the mother of Sahib Singh. Though she is an illiterate lady, but she approximately mentioned the month and the year of birth of each of her children, including Sahib Singh who, according to her, was born in the beginning of 1973. She further stated that Sahib Singh was 153/4 years of age when he was falsely implicated in a case of murder. In the cross-examination, she admitted that she is not in a position to give the exact date of birth of any of her sons or daughters but she had a good memory to remember the month and the year of the birth of each of her children. She also stated that Sahib Singh was admitted in the Corporation school for the first time and never studied in St. John School, nor Chander ever signed any admission form in that school. She was cross-examined at length but nothing substantial came out of it which can throw doubt on her testimony.

21. On the basis of this evidence on record, I have no hesitation to hold that the evidence of CW-1, H. J. Solomen and that of Dr. Sarangi on which much reliance has been placed by the Courts below, is shaky and does not inspire confidence to fix the age of the petitioner Sahib Singh between 20 to 22 years at the time of the commission of the offence. The evidence of the primary school teacher, the sports in charge and the relation witnesses is more weighty and worthy of reliance. Their evidence finds support from the documentary evidence of admission form and the affidavits submitted at the time of the admission of Sahib Singh in the primary school mentioning his date of birth as 1-1-1973. He was thus a juvenile at the time of commission of offence and has to be tried by the Juvenile Court for the offence of murder for which he is being prosecuted.

22. In the result, I accept the revision petition and set aside the orders of Shri P. D. Gupta, Metropolitan Magistrate dated 15-12-88 and that of Shri M. A. Khan, Addl. Sessions Judge, Delhi, dated 12-5-1989.

23. Petition allowed.