

Ram Inder Vs. State

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Court : Delhi

Decided On : Dec-09-1991

Reported in : 46(1992)DLT153

Judge : V.B. Bansal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2305 of 1991

Appellant : Ram Inder

Respondent : State

Advocate for Pet/Ap. : I.U. Khan and; B.D. Batra, Advs

Judgement :

V.B. Bansal, J.

(1) Ram Inder has been arrested by the police of P.S Zaffarpur, Delhi for the offences under Secs. 302/201 Indian Penal Code in Fir 72 of 1991 and is at present in custody.

(2) By way of this application he has prayed for being released on bail.

(3) The case has been registered on the basis of statement of Jagbir Singh and briefly stated the allegations against the petitioner have been that on 10th

September, 1991 he was driving full body Truck No. DL-10 5988 and hit against the Scooter No. DL-4S C-0754 driven by Ashok Kumar who fell down and thereafter the petitioner got down from the truck and subsequently moved it in the back direction crushing aforesaid Ashok Kumar under the back wheel of the truck. He, thereafter, escaped from the spot driving away the said truck.

(4) Learned Counsel for the petitioner has submitted that the petitioner was born on 11.3.1976 and in this way he was less than 16 years of age on the date of the incident and, thus, a juvenile within the ambit of Juvenile Justice Act. He has placed reliance on the birth entry in the record of the Mcd as also as recorded in the Govt. Co-educational Senior Secondary School Mundela Kalan, Delhi where he was studying and where from he passed the Delhi Secondary School Examination in 1991.

(5) Learned Counsel for the respondent has submitted that the age of the petitioner as referred to in the aforesaid submissions is not correct since the petitioner gave his age as 19 years at the time of his Medical examination before the doctor of Safdarjang Hospital, New Delhi on 15.3.1991 and the same age was given by him in his statement on 28.9.1991 before Metropolitan Magistrate refusing to participate in the test identification proceedings. He has also submitted that even the Radiologist has opined that Ram Inder was more than 17 years but less than 18 years. He has further submitted that even In the ration-card the petitioner has been shown as married and the age of his wife Anita has been shown as 20 years. He has, thus, submitted that it cannot be said that the petitioner is a juvenile and so prayed that the application may be dismissed.

(6) I have given my thoughtful consideration to all these submissions and have also gone through the relevant documents placed on the file.

(7) Extract from the birth register of the year 1976 of village Mundela Kalan maintained by the Mcd has been produced besides the copy of the character certificate issued in respect of the petitioner by Senior Secondary School, Mundela Kalan. The date of birth of the petitioner in these documents has been mentioned as 11th March, 1976.

(8) Learned Counsel for the respondent has not been able to point out any material at this stage to show that the birth entry was not genuine and it stands repeated in the school record.

(9) There is no doubt that the prosecution has obtained report of the Radiologist to show that the petitioner was more than 17 years but less than 18 years. However, a perusal of the copy of the report of the Radiologist clearly indicates that there are over-writings with regard to the figures '7' and '8' in numerals '17' and '18' and it is not known as to how and under what circumstances the over-writing has been made. In case *Bhoop Ram v. State of* : 1990 CriLJ2671 it has clearly been held by the Supreme Court that when there was no material throwing doubt on entries in school certificate it cannot be rejected on the basis of the report of Medical certificate to the effect that the accused was above 16 years on the relevant date.

(10) There is no doubt that in the Mlc and in the statement of the petitioner before the Metropolitan Magistrate his age has been recorded as 19 years. However, this cannot be considered to be a conclusive proof at this stage so as to contradict the birth entry. On similar reasons preference cannot be given to an entry in the ration-card indicating that the wife of the petitioner was 20 years or that on this account the petitioner has to be considered to be more than 16 years. Prima facie, I am clearly of the view that the investigation so far conducted shows that the petitioner was a child less than 16 years on the date of occurrence. In these circumstances, he is entitled to get the benefit of Sec. 18 of the Juvenile Justice Act.

(11) It is without prejudice to the right of the prosecution to collect evidence to show that the petitioner was not a child.

(12) In view of my aforesaid discussion, I order for the release of the petitioner subject to furnishing personal bond for Rs. 10.000/ with one surety in the like amount to the satisfaction of the concerned Court.

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