

Mohd. Idris Vs. State

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Court : Rajasthan

Decided On : Nov-06-2006

Reported in : RLW2007(2)Raj913

Judge : Harbans Lal, J.

Appellant : Mohd. Idris

Respondent : State

Disposition : Petition dismissed

Judgement :

Harbans Lal, J.

1. This revision petition under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C) calls in question the correctness, legality and propriety of the order dated 30.1.2006 vide which the learned District & Sessions Judge, Jaipur City, Jaipur has dismissed the Criminal Appeal No. 413/2005 and has up-held the order dated 10.12.2005 passed by the Juvenile Justice Board, Jaipur holding that the petitioner was more than 18 years of age on the date of occurrence.

2. Briefly stated, the relevant facts giving rise to this petition and necessary for its disposal are that at about 9.30 a.m. On 10.8.2003, complainant Shabbir Ali came

from outside. Idris and Jafar were present there duly armed with Guptinuma Katar. Idris inflicted injury to him and then to complainant's brother Tanna @ Hasan Ali. Jafar gave him a gupti blow on the chest. The injured was taken to the hospital in a Taxi. On this report, the FIR No. 130/2005 was registered at PS Subhash Chowk, Jaipur for the offence under Section 307/34 IPC. The injured succumbed to his injuries. So, the offence under Section 302 IPC was added. After investigation, charge-sheet was filed. The case was committed which is said to be pending trial. Petitioner Mohd. Idris moved an application before the learned District & Sessions Judge, Jaipur City, Jaipur stating that he was a juvenile on the date of occurrence. An inquiry was conducted with regard to the age of the petitioner and vide order dated 10.12.2005 he was held to be more than 18 years of age. An appeal under Section 52 of the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter in short called as 'the Act of 2000') was filed before the learned Sessions Judge, Jaipur City, Jaipur which was dismissed on 30.1.2006. Hence, this revision petition.

3. It is contended that the learned courts below have not properly considered the documents about the date of birth of the petitioner and other evidence on record. As per ration card, his age is 14 years. As per the medical opinion, he was above 16 years and below 17 years of age on the date of occurrence. Where two views are possible, it is submitted, one in favour of the accused must be accepted, one in favour of the accused must be accepted. The school certificate is not an authentic document as there are two documents containing different dates of birth of the petitioner.

4. Reliance has been placed on Saalim v. Union of India 2003 (1) Cr. Court Cases 49, Anuj Kumar Singh @ Anuj Singh v. State of Bihar 2003 (2) Cr. Court Cases 118 (Jharkhand) and Ravinder Singh Gorkhi v. State of U.P. 2006 Cr.L.J. 2791.

5. Learned PP as well as learned Counsel for the complainant have supported the order of the learned courts below. They have placed reliance on Arnit Das v. State of Bihar : 2000 CriLJ2971 , Bhoop Ram v. State of U.P. : 1990 CriLJ2671 , Nar Singh @ Naresh v. State and Anr. 1998 (2) WLC (Raj.) 145 and Mehmood Khan v. State 2002 (2) WLC (Raj.) 380 : RLW 2002 (3) Raj. 1810.

6. I have carefully considered the submissions made at the bar and have perused the relevant documents as well as the case law cited at the bar.
7. It may be stated at the out-set that the Juvenile Justice Board has discussed the entire oral and documentary evidence which has been produced during the course of inquiry which has been produced during the course of inquiry with regard to the age of the petitioner in its order dated 10.12.2005. It has come to a clear and definite finding that the age of the petitioner was more than 18 years on the date of occurrence. The learned District & Sessions Judge, Jaipur City, Jaipur has also affirmed and up-held the said finding in the impugned order. No ostensible error, illegality or impropriety in the said order has been pointed out so as to call for and justify the aforesaid finding with regard to age of the petitioner in exercise of the limited scope of revisional jurisdiction of this Court.
8. In *Saalim v. Union of India* (supra), it has been held that in case of variation in between the medical evidence and the entries in the school register as regards age the latter i.e. school register should be preferred once genuineness of School Leaving Certificate is admitted or is not questioned.
9. In *Anuj Kumar Singh @ Anuj Singh v. State of Bihar* (supra), when the genuineness of the entry of admission register has been doubted, then only the medical report can be the scientific basis for determination of age.
10. In *Ravinder Singh Gorkhi v. State of U.P.* 2006 Cr.L.J. 2791, the register maintained by School was not produced. Second copy of the school leaving certificate was produced and not its original copy. The Head Master of the School had stated that he had no personal knowledge of the date of birth of the accused. It was, therefore, held that the claim of the accused on the basis of such a copy of school leaving certificate mentioning the age as 16 years at the time of commission of offence was not sustainable.
11. In the instant case, the Juvenile Justice Board has relied upon the mark sheet Ex. A-4 and Scholar Register Ex. A 5 in which the date of birth of the petitioner has been shown to be 2.4.1987. The alleged occurrence took place on 10.8.2005. As such, the age of the petitioner was 18 years and 6 months on the date of

occurrence. AW-5 Mohd. Sabir has stated that petitioner Mohd. Idris was born in 1986. According to this, he was about 19 years of age on the date of occurrence. These documents are 10 years old and were prepared when there was no controversy or dispute about the age of Mohd. Idris. Therefore, the finding recorded by the Juvenile Justice Board as confirmed by the learned District & Sessions Judge, Jaipur City, Jaipur cannot be found fault with. Even as per the authorities referred to by the learned Counsel for the petitioner, the medical evidence can be looked into and relied upon only where the school record is not genuine or is doubtful. But in the instant case, the school record cannot be said to be doubtful. The same has been duly proved by Smt. Roshan Saxena AW-2. There is nothing in the statement of this witness on the basis of her evidence could be dubbed as unreliable. The petitioner had taken admission in Class III of the school which is a Government School. The record maintained by the Government school is a public document. The original record as well as its certified copy are admissible into evidence.

12. Having thus, carefully considered the entire evidence on record and the contentions of the learned Counsel for the parties, I am clearly of the view that the finding recorded by the Juvenile Justice Board as affirmed by the learned District & Sessions Judge, Jaipur City, Jaipur in appeal is based on proper and legal appreciation of the evidence on record. This calls for no interference what so ever.

13. Consequently, this revision petition being devoid of merit and substance deserves to be and is hereby dismissed.