

Sunil Sahu Vs. the State of Jharkhand

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Court : Jharkhand

Decided On : Feb-23-2010

Judge : D.K. Sinha, J.

Appellant : Sunil Sahu

Respondent : The State of Jharkhand

Disposition : Petition allowed

Judgement :

D.K. Sinha, J.

1. This Cr. Revision is directed against the order impugned dated 17.08.2009 passed by the Juvenile Justice Board, Gumla in G.R. No. 793 of 2005 arising out of Kamdara P.S. Case No. 38 of 2005 by which the petition filed on behalf of the petitioner claiming his juvenility was rejected. As a matter of fact the plea of juvenility was raised before the 1st Additional Sessions Judge, Gumla after record was transferred on commitment giving rise to Sessions Trial No. 79 of 2005. The learned Addl. Sessions Judge referred the matter to the Juvenile Justice Board under Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2000 to which an enquiry was conducted under Section 49 of the Act and on determination the petitioner was found to be major above 18 years of age. However, without availing the forum for appeal against the impugned order the petitioner has preferred Criminal Revision under Section 53 of the Act and I find

there is no bar in preferring revision. The age of the petitioner claiming juvenility may be determined even at the revisional stage in view of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 that has been introduced by amendment of the Act which speaks,

Procedure to be followed when claim of juvenility is raised before any Court- (1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, slating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2. The prosecution story in short was that when the informant along with his sister Ludki Devi had visited on 23.11.2005 the field appertaining to Khata No. 197, Plot No. 1443 with an area of 3.2 acres in which the share of the husband of Ludki Devi was 50 decimals, both found the accused persons harvesting paddy crops to which his sister Ludki Devi protested not to harvest the crops from the share of her husband whereupon all the named accused persons including the petitioner variously armed with stick, farsa and stones carrying in bags started assaulting them. On the alarm there being raised by her the witnesses arrived besides other accused persons who started assaulting the informant and other witnesses indiscriminately causing injuries to them. The informant admitted land disputes from before the alleged occurrence between the parties. A case was registered against the accused persons including the petitioner for the alleged offence under Sections 148/149/323/324/307 of the Indian Penal Code and subsequently Section 302 I.P.C. was added.

3. Learned Counsel assailed the order impugned passed by the Juvenile Justice Board, Gumla on the ground that the various documents were filed on behalf of the petitioner in support of his juvenility that his date of birth as recorded in the admission register of the High School was 4.12.1989 and he was below 18 years of age on the alleged date of occurrence on 23.11.2005 but the learned Juvenile Justice Board ignoring the documentary evidence viz. school leaving certificate of class VIII (Ext. 1/1) entry made in the admission register of High School, Ext. 2 and the oral testimony of the mother that the petitioner was only 16 years of age, the Board relied upon the opinion given by the Medical Board which assessed the age of the petitioner between 25 to 30 years as on 11.05.2009. Learned Counsel further pointed out that the Juvenile Justice Board relied upon the decision reported in 2007(2) ECri C 315 (Jhr.) by which this Court in *Rajesh Mehta v. The State of Jharkhand* observed that for determination of the age of a juvenile, procedure laid down in Rule 22 of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 has to be followed but such proposition could not be followed in letters and spirit by the Juvenile Justice Board. It was simply held by the Juvenile Justice Board,

Now so far claim of petitioner Sunil Sahu is concerned, the documentary evidences produced on his behalf do not conform to the documents specified by Rule 22(5) of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 and hence not admissible In view of authority of Hon'ble Court as referred above.

The medical opinion regarding this accused is that as on date of examination on 11.05.2009 his age is estimated to be between 25-30 years of age. Reckoning the same even with lower margin of this estimated age, the age of petitioner as on date of occurrence i.e. on 23.11.2005 comes to be around 21 years at least and in any case he is found to be major well above the age of Juvenility.

4. Having regard to the facts and circumstances of the case, I find patent error in the assessment and determination of age of the petitioner as made by the Juvenile Justice Board. The Board failed to explain as to how the documentary evidence produced on behalf of the petitioner did not conform to the documents specified by

Rule 22(5) of the Jharkhand Rules, 2003 as the admission register as well as the school leaving certificate issued by the St. Aloish High School, Turundu duly signed by the Headmaster and proved by him as enquiry witness No. 6 could not be considered as the same were admissible under Section 35 & 61 of the Evidence Act, 1872. The order of priority has to be given to the entry made in the admission register, may not be the first attended, as well as the school leaving certificate in preference to the opinion of the duly constituted Medical Board and the learned Juvenile Justice Board committed error by observing that the documents produced on behalf of the petitioner in support of his juvenility did not conform to the documents specified by Rule 22(5) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003.

5. In the facts and circumstances, I find and hold in view of the documentary evidence that were proved in course of enquiry under Section 49 of the Juvenile Justice Act that the petitioner was juvenile on the alleged date of occurrence and therefore he should be proceeded under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 by splitting his case record from the Sessions Trial No. 79 of 2005 pending before the Additional Sessions Judge, Gumla.

6. Accordingly, this petition is allowed.

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