

Mohammad at Noor Mohammad Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-26-2010

Judge : Ashok Srivastava, J.

Appeal No. : CRIMINAL REVISION No. - 772 of 2009

Appellant : Mohammad at Noor Mohammad

Respondent : State of U.P. and Another

Advocate for Def. : Govt. Advocate; S.C.Tripathi, Advs

Advocate for Pet/Ap. : Kamal Krishna; F.A.Alvi; K.K.Tripathi, Adv

Judgement :

1. This revision has been filed against the order dated 20.2.2009 passed by learned Additional District & Sessions Judge, Court No. 2, Jaunpur in S.T. No. 411 of 2008 (State v. Amir and others).

2. Brief facts of the case are that on 31.7.2008 at about 7.00 P.M. in village Mani Kala, P.S. Kheta Sarai, District Jaunpur, an altercation took place between the revisionist and one Akram. The revisionist started abusing Akram. In the meanwhile opposite party no. 2 Habibulla alongwith his brother Shukurullah reached at the scene of altercation. They rebuked the revisionist and asked him not to abuse Akram and his family members. An enraged revisionist went inside his house and came out holding a knife in his hand alongwith his brother Amir and

started inflicting knife blows upon Shukurullah. Shukurullah received severe knife injuries, fell down on the ground and died at the spot. An F.I.R. was lodged with the police on the same day at about 8.15 P.M. The matter was investigated and a chargesheet was submitted in the court of the learned Magistrate. The learned Magistrate took cognizance of the case and after completing other legal formalities committed the case to the court of Sessions. The Sessions Trial was registered as S.T. No. 411 of 2008 and it was transferred for trial to the court of learned Sessions Judge, Court No. 2, Jaunpur. Both the accused were produced before the learned Addl. Sessions Judge where they moved an application, apparently under Section 7A of Juvenile Justice (Care & Protection of Children) Act, 2000 (for short 'the Act'). The learned trial judge disposed of the said application after collecting the evidence relating to various facts about the age of both the chargesheeted accused persons. He had recorded the statements of a few witnesses and examined the documents filed before him. After hearing the arguments on the said application under Section 7A of the Act, the learned Judge declared Mohd. Amir a juvenile but he was of the opinion that on the relevant date the revisionist was not a juvenile and on that date his age was above 18 years and therefore he turned down his prayer. Feeling aggrieved by the order declaring Amir a juvenile, the opposite party no. 2, Habibullah moved a criminal revision before this Court being Crl. Revision No. 1082 of 2009 in which the revisionist has challenged the finding of the learned trial judge as far as it related to the age of the accused Amir. The abovementioned revision was dismissed by this court on 31.3.2009.

3. On the other hand feeling aggrieved by the order of the learned trial judge the revisionist Mohammad @ Noor Mohammad preferred the present revision on the ground that his contentions were not accepted by the learned lower court wherein he had claimed that he was a juvenile on the relevant date.

4. The affidavits in this case have been exchanged.

5. I have heard learned counsel for the parties in detail and perused the records as well as gone through the case laws cited from both sides.

6. From the perusal of the order impugned it is evident that Amir and revisionist Mohammad @ Noor Mohammad are real brothers and they are sons of one and the same parents. The learned lower court was of the opinion, fact wise, that in the school certificate, the date of birth of Amir has been mentioned as 20.6.1992 whereas the age of his elder brother Mohammad @ Noor Mohammad i.e. the revisionist has been mentioned as 5.11.1991. These two dates indicate that there is only a difference of some seven months between the age of two brothers. The learned Judge was of the opinion that it is practically not possible and, therefore, the age of the revisionist was definitely more than 18 years rather about 19 years on the date of the alleged incident.

7. It has been asserted by the revisionist that his date of birth is 5.11.1991 and date of birth of his real younger brother is 20.6.1992. This indicates that there is only a difference of 7 months and 15 days in the age of two brothers. Though it is medically not impossible yet it is highly improbable. As per medical science after the birth of a child, there is a vaginal discharge from the womb of the mother which is called lochia. Lochia consists of blood, mucous and tissues. This vaginal flow of lochia starts from the second or third day after the birth of the child and it persists upto six weeks. This is a period in which it is rather impractical for a husband to have a sexual intercourse with his wife in such a vaginal state. Therefore, the stand of the revisionist that he was born just seven and half months before the birth of his younger brother is highly improbable. The factual matrix as disclosed by the learned trial judge clearly indicates that the date of birth of the revisionist as disclosed in High School marksheet is not correct. It may be mentioned here that no High School certificate has been filed but even a date mentioned in a High School certificate cannot be taken as gospel truth and it is always rebuttable. If the circumstances show that date of birth as mentioned in the High School certificate is not correct, that entry can always be discarded. It is a matter of common experience that keeping in view the future opportunities to have a government job or other job, a reduced age of a child is mentioned by his parents while filling up the admission form at the time of the entry of the child in his school. This aspect as prevailing in the society cannot be overlooked. In the instant case, fact wise, it clearly appears that the age of the revisionist or his date of birth had not been correctly shown by his father while he was filling up the admission forms of both of

his sons Amir and Mohammad @ Noor Mohammad.

8. Further this court is hearing a revision and not an appeal, therefore, the factual aspect as dealt with by the learned trial court in his impugned order dated 20.2.2009 cannot be examined. On this point, my attention has been drawn towards JT 2010 (2) SC 603 (Jabar Singh v. Dinesh and another). In para 13 of the said judgment, the Apex Court has held that "A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled 'Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which competent authority or court of session has passed an order for the purpose of satisfying itself as to the legality of propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot controvert itself to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial court."

9. Keeping in view the above position of law, I do not find it reasonable to interfere with the inferences arrived at by the learned trial court which are based on facts and analysis of documents relating to facts as I am not dis-satisfied as to the legality or propriety of the order impugned.

10. In view of the above discussions, I am of the view that there is no force in this revision and accordingly it is dismissed. The stay order, if any, stands vacated.

11. Let a copy of this order be sent to the learned Sessions Judge, Jaunpur, for its onward transmission to the court concerned for its information and necessary action.

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