

Jitender @ Jitu Vs. State

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Court : Delhi

Decided On : Jun-03-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 7-A, 2(l), 15, 16; Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12(3)(b)

Appeal No. : CRL. M. A. 15749/2010 & CRL.A. 438/2010

Appellant : Jitender @ Jitu

Respondent : State

Advocate for Def. : Mr Sanjay Lao, Adv.

Advocate for Pet/Ap. : Mr Ravindra Narayan, Adv.

Judgement :

1. The present application under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act) has been filed on behalf of the appellant Jitender @ Jitu claiming that he was a juvenile in conflict with law as defined in Section 2(l) of the said Act on the date of commission of the alleged offence, which was 19.08.2004. In short, the appellant contends that he was below the age of 18 years on the date of the incident and that he should be given the benefit of the provisions of the said Act.

2. By an order passed by the predecessor Bench on 26.11.2010, the Registrar Appellate (Judicial) was directed to conduct an enquiry as to whether the appellant was a juvenile on the date of the alleged commission of offence. This direction was given after the said Bench had noted that the date of birth of the appellant, as given in the family register of the appellant maintained by the Gram Panchayat, Manikpur, Block Achhaldha, Tehsil Vidhuna, District Auraiya, UP, was 09.10.1987. If that were to be correct, then the age of the appellant on the date of the incident would have been approximately 16 years and 10 months.

3. Although the predecessor Bench had directed that the enquiry be conducted and the report be furnished before the next date of hearing, which was 03.03.2011, we found that the said Registrar had not been able to achieve much progress in the matter and had fixed the next date of hearing on 05.05.2011, which was beyond the date on which the Court had directed the matter to be listed, that is, 03.03.2011. Consequently, we had directed that the concerned Block Development Officer should produce, through a duly authorized officer/ official, the original record pertaining to the family details of Jitender @ Jitu. We had directed issuance of notice to the appellants father Sh. Raj Kumar, son of Sh. Pati Ram, resident of 1844, Phase-3, JJ Cluster, Madanpur Khadar, Delhi-110076 to appear in person and produce whatever evidence and documents including any school certificate showing the date of birth of his son Jitender @ Jitu.

4. On 21.03.2011, one Mr Sravan Lal, the Village Development Officer of Village Naunik Pur, falling in Block Achhaldha, Tehsil Vidhuna, District Auraiya, UP appeared before us and he produced the original family register. A photocopy of page No. 46 of register No. II was taken on record and the original register, which had been seen by us, was returned to the said Village Development Officer. We found that insofar as the entry of the appellant Jitender @ Jitu in the said family register is concerned, there was some interpolation in the date of birth, although the same did reflect his date of birth as 09.10.1987. On that date, that is, on 21.03.2011, the appellants father Sh. Raj Kumar was also present in Court, as directed. He had stated that he was unable to produce any other evidence with regard to the age of his son. In these circumstances, we felt that it would be appropriate that an ossification test of the appellant Jitender @ Jitu be conducted.

For this purpose, the Superintendent of the concerned jail was directed to take the appellant Jitender @ Jitu to All India Institute of Medical Sciences on 25.03.2011 in the first instance for the purposes of conduct of the ossification test and we had required that the report be submitted before the next date of hearing.

5. In compliance with our direction, the following Medical Board was constituted:-

1. Dr Sanjeev Lalwani

Assoc. Professor of Forensic Medicine - Chairperson

2. Dr Ajay Logani

Assoc. Professor of CDER - Member

3. Dr Devasenathipathy

Senior Resident of Radiodiagnosis - Member

4. Dr Sudhin Kurien

Department of Hospital Administration - Member Secy. The radiological examination of the appellant, as indicated in the report, was as under:-

"X-Rays advised for age estimation:-

X-Ray Wrist with hand, Elbow, Plevis, Sternum, Knee, Medial end of Clavicle was done in Radiology Deptt. and OPG in Dental OPD. Report of Radiological Examination

1. B/L Ilac Crests have fused, suggestive of age more than 20 years 1 Years;

2. All the four ossification centres of body of sternum are fused suggestive of bone age 25 years. (According to the reference article: Gautam, RS etal. The human Sternum as An index of age & sex, J. Anat. Soc. India 52(1) 20-23 (2003);

3. Coccyx not fused with sacrum suggestive of Bone Age 28 years. (Bromme DR etal, Postnatal Maturation of the Sacrum and Coccyx : MR Imaging, Helical CT and Conventional Radiography, AJR : 170, April 1998).

Imp.: - Bone age 25-28 years."

The final report and opinion of the said Medical Board was as under:-

"REPORT

Considering the findings of physical, dental and radiological examination we are of the considered opinion that BONE AGE of appellant Jitender @ Jitu, S/o Sh. Raj Kumar bearing identification marks 1. Scar on Rt. Side forehead. 2. Tatoo mark on Rt. Dorsum of hand, is between 25 years to 28 years."

6. Thus, in the opinion of the Medical Board, the age of the appellant Jitender @ Jitu on the date of his examination, i.e, 25.03.2011, was between 25 years to 28 years. This would mean that if his age is regarded to be 25 years as on 25.03.2011, he would be 18 years and 4 months old on the date of the incident, that is, 19.08.2004. However, it is the contention of the learned counsel for the appellant that a further benefit of one year is to be given in terms of Rule 12 (3) (b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the said Rules). It was contended that if the said benefit of one year is given, then the age of the appellant, based upon the ossification test, would be about 17 years and 4 months on the date of the incident and, therefore, he would have to be regarded as a juvenile in conflict with law and would have to be given the benefit under the said Act.

7. On the other hand, the learned counsel for the State submitted that since the Medical Board has already given a range, that is, 25 years to 28 years, therefore, there cannot be a further reduction in the age of the appellant. It was contended that had the Medical Board given only one age, then perhaps the further benefit of margin of one year on the lower side could have been given in view of the provisions of Rule 12 (3)(b) of the said Rules.

8. In order to consider these contentions, it would be necessary to set out the relevant provisions of Rule 12 (3)(b) of the said Rules, which read as under:-

12. Procedure to be followed in determination of age. (1) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

9. A plain reading of the said Rule 12(3) makes it clear that in determining the age of a juvenile in conflict of law, the first thing that has to be looked at is the matriculation or equivalent certificate. If that is not available, then the date of birth

certificate from the school (other than a play school) first attended is to be considered. If that is also not available, then the birth certificate given by a corporation or a municipal authority or a panchayat is to be taken into account. In the present case, we find that there is no matriculation or equivalent certificate, there is no date of birth certificate from any school but, a certified copy of the family register (Annexure A to the application) had been produced, which did indicate the appellants date of birth to be 09.10.1987. However, as pointed out above, when the original register was produced before us, we had noted that there was some interpolation in the year of birth, although it appeared to be 1987. Because of this, a doubt had arisen and, therefore, we sought corroboration in the form of requiring a medical opinion from a duly constituted Medical Board as prescribed in Rule 12 (3)(b) of the said Rules. In the present case, we find that the Medical Board has given its opinion that the age of the appellant on the date of the examination was between 25 and 28 years. It is clear that an exact assessment of the age could not be done. It is in this backdrop that the contention has been raised on behalf of the appellant that the Court ought to give the benefit to the appellant by considering his age on the lower side within the margin of one year.

10. We are not in agreement with the submission made by the learned counsel for the State that when the Medical Board gives a range of ages, then the benefit of the one year margin on the lower side ought not to be given. A plain reading of Rule 12 (3)(b) indicates that the Court may give that benefit of one year margin on the lower side in case the exact assessment of the age cannot be done. It is clear that when the Medical Board itself has given a range of ages between 25 and 28 years, the exact assessment of the age was not possible. Therefore, the benefit of the one year margin on the lower side can be given even where the Medical Board has given a range of ages.

11. This leaves us with the question as to whether we should exercise this discretion in giving the benefit of the margin of one year on the lower side to the appellant in the present case or not. We feel that we should. This is because the age, as per the family register, although there is some doubt because of the overwriting, appears to

be in consonance with the age as per the Medical Board if the margin of one year on the lower side is given. We have also noted that as per the family register, the appellant would have been approximately 16 years and 10 months old on the date of the incident and if we consider the opinion of the Medical Board, after giving the benefit of the one year margin on the lower side, the age of the appellant on the date of the incident, would be approximately 17 years and 4 months. Considering the closeness in the two ages, one as per the family register and the other as per the Medical Boards opinion, after given a margin of one year on the lower side, we feel that the benefit ought to be given to the appellant. This is all the more so because the medical determination of age is not an exact science. In the report of the Radiological Examination referred to above, it has been stated that as all the four ossification centres of the body of the sternum are fused, it is suggestive of a bone age of greater than 25 years (25 years). The Medical Board has cited the reference article Gautam, RS et al: The Human Sternum as An Index of Age & Sex: Journal of the Anatomical Society of India: Vol. 52, No.1 (2003- 01-2003-12) in support of this conclusion. However, when we examine the said reference article, we find that its conclusion, inter alia, is:- **"The fusion of the third and fourth sternebrae is complete at puberty. The fusion of the first and second and second and third sternebrae occurs by the age of 25 years."**

(underlining added)

This means that the four sternebrae are fused by 25 years. It does not mean that they cannot be fused when, say, the person in question is 24 years of age. Thus, the floor of 25 years in the age range of 25-28 years cannot be taken as sacrosanct. This fact has been recognized by the Supreme Court in Babloo Pasi v. State of Jharkhand & Anr.: (2008) 13 SCC 133, when it observed that the medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence, if available.

12. Furthermore, the said Act is a beneficial legislation which is for the benefit of juveniles. At this juncture, we may note the observations of the Supreme Court in the case of Hari Ram v. State of Rajasthan : (2009) 13 SCC 211:-

"35. Sub-Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted Medical Board, which would declare the age of the juvenile or the child. In case exact assessment of the age cannot be done, the Court or the Board or as the case may be, the Child Welfare Committee, for reasons to be recorded by it, may, if considered necessary, give benefit to the child or juvenile by considering his/ her age on the lower side within a margin of one year.

36. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realize their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals."

13. It is in the light of the foregoing that we find that the appellant, as on the date of the incident, was below the age of 18 years and was, therefore, covered by the definition of juvenile in conflict with law as given in Section 2(l) of the said Act.

14. Having concluded that the appellant Jitender @ Jitu was a juvenile in conflict with law on the date of commission of the offence, it is to be seen as to what is to be done with him. The learned counsel for the appellant had submitted that he had taken instructions from the appellant that he does not want to challenge the conviction and that it is only with regard to sentencing that he is seeking the benefit under the said Act. The appellant has been in custody for about 6 years and 7 months. This means that he has been in custody far in excess of three years, which is the maximum period of detention permissible under the said Act.

This is apparent from a reading of the provisions of Sections 15 and 16 of the said Act. By virtue of Section 7-A of the said Act, the benefit has to be given to the juvenile in conflict with law at any stage of the matter. Inasmuch as the appellant has already been in custody for over three years, while we are maintaining the conviction and dismissing his appeal with regard to conviction, we set the appellant Jitender @ Jitu at liberty after giving the benefit of the said Act because of the fact that he has already been in custody for a duration beyond the maximum period prescribed under the said Act. The sentence awarded to him is set aside. He is directed to be released forthwith.

The appeal stands disposed of, as above.

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