

Chob Singh Vs. State

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Court : Delhi

Decided On : Apr-09-2013

Judge : Sanjiv Khanna

Appellant : Chob Singh

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

09. 04.2013 CRIMINAL APPEAL NO.237/1999 & CLR.M.A. 7186/2012 CHOB SINGH Through: Appellant Ms. Saahila Lamba, Advocate. Through: Respondent Ms. Richa Kapoor, APP versus STATE AND CRIMINAL APPEAL NO.17/2000 & CLR.M.A. 7187/2012 ASHOK KUMAR Through: Appellant Ms. Saahila Lamba, Advocate. Through: Respondent Ms. Richa Kapoor, APP versus STATE CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SANJIV KHANNA, J.

(ORAL) 1. Chob Singh and Ashok Kumar by the impugned judgment dated 21.07.1998 have been convicted under Sections 302, 392 read with Section 34 of the Indian Penal Code, 1860 (IPC). They have been sentenced to life imprisonment and fine of Rs.2,000/- each for the offence under Section 302 read with Section 34 IPC for having committed the murder of Prem Singh in the night intervening between 25/26.07.1997. In default of payment of fine, they have to undergo rigorous imprisonment for six months. For the offence under Section 392

read with Section 34 IPC, the appellants have been sentenced to undergo rigorous imprisonment for four years each.

2. Before the trial court, the two appellants had pleaded and claimed they were less than 16 years of age on the date of the incident i.e., 25/26.07.1997 and hence juveniles as per the then law. In view of the contention raised ossification test of both the Appellants were conducted. The trial court record has several X-rays which were under taken at Guru Tegh Bahadur Hospital, Shahdara to ascertain and determine their age. On the basis of the said X-rays, in the case of appellant Chob Singh vide report dated 22.01.1998, doctors opined that his approximate radiological age was between 18 to 20 years on the date of examination. The report also gives the reason for coming to the said conclusion. It is mentioned that the Iliac crest was not fused whereas epiphyses of the elbow joint was fused. The upper end of humerus and lower end of radius of ulna were also fused. In the case of appellant Ashok Kumar as well, the doctors opined that his approximate radiological age was between 18 to 20 years as on 22.01.1998. His Iliac crest was not fused but lower end of the radius was fused.

3. In view of the Juvenile Justice (Care and Protection of Children) Act, 2000, any person who has not completed the age of 18 years is juvenile. Supreme Court in Hari Ram v. State of Rajasthan

13. SCC 201.has held that the new enactment, i.e., the Juvenile Justice (Care and Protection of Children) Act, 2000 will apply to all pending proceedings including appellate proceedings. This view has been reiterated in Amit Singh v. State of Maharashtra, (2011) 13 SCC 744.As per the said legal position, we are required to consider and examine whether the two appellants herein were juvenile, i.e., less than 18 years of age on the date of the offence, or on, 25/26.07.1997.

4. In the case of appellant Chob Singh, during the pendency of the appeal, vide order dated 22.02.2013, an inquiry was directed to be conducted by the court of District & Sessions Judge on the question of juvenility. We have received the report dated 21.02.2013 of Mr. P.S.Teji, District & Sessions Judge (East), Karkardooma Courts, Delhi that Chob Singh was less than 18 years of age on the date of incident, i.e., 25/26.07.1997.

5. In the case of appellant Ashok Kumar, no further inquiry has been conducted and the appellant Ashok Kumar relies upon the ossification test report dated 22.01.1998.

6. The inquiry report of District and Sessions Judge dated 21.02.2013 in the case of appellant Chob Singh relies upon the report of the Medical Board dated 21.12.2012 in which it has been opined that on the date of the examination, appellant Chob Singh was between the age of 22 and 25 years. The said report relies upon X-rays. We are inclined to accept the contention of the learned Additional Public Prosecutor that this report should not and cannot be accepted. Examination of the said report indicates that on dental examination it was opined that the appellant on the date of examination was not less than 17 years but his upper age could not be determined. The X-rays reports clearly indicate that there was a fusion of bones including Iliac crest. There is no indication whatsoever in the said report to indicate how the Board arrived at the conclusion that the appellant on the date of examination was not more than 25 years. We record and notice that the report itself is per se unbelievable and cannot be accepted when we physically see the two appellants who have appeared before us in person. Besides, the said report do not match and is contrary to the medical opinion given earlier in the case of Chob Singh vide ossification report dated 22.01.1998. If we accept this report dated 21.02.2013, the appellants would have been in their early teens. However, the earlier ossification reports dated 22.01.1998 support the plea of the appellants.

7. It is recorded in the reports dated 22.01.1998 that the X-rays of the appellants Chob Singh and Ashok Kumar show that the Iliac crest was not fused. This is a clear finding recorded in the two ossification reports of appellants Chob Singh and Ashok Kumar.

8. In Modis Medical Jurisprudence and Toxicology- 23rd Edition there is a table at page 289 referring to the different studies made regarding appearance and fusion of some of the epiphyses as observed by various authors. As per the table, it is indicated in the studies conducted on Bengalis by Galstaun, fusion of ilium in males takes place at the age of 19 to 20 years. Our attention was also drawn to Lyons Medical Jurisprudence and Toxicology- 11th Edition, which also has a table

at page 405, referring to Roentgenologic studies of Epiphyseal union around elbow, wrist and knee joints and pelvis in boys and girls of U.P. (S.M. Das Gupta, Vinod Prasad, Shamer Singh, J.

Ind M A., Vol 62, No 1, Jan 1, 10-12, 1974) which suggests that fusion in Iliac crest in males takes place in the age group of 21-22 years.

9. Learned Amicus Curiae has drawn our attention to three Articles/Research Papers. The first Article is on Estimation of Age from Pelvis - A Radiological Study by Alok Kumar, Lecturer, Deptt. Of Forensic Medicine, Ascoms. & Hospital, Sidhra, Jammu-180017; A.K. Srivastava, Professor, Deptt. of Forensic Medicine; Mukesh Yadav, Associate Professor, Deptt. of Forensic Medicine, Ascoms. & Hospital, Sidhra, Jammu-180017; Virendra Kumar, Asstt. Professor, Deptt. of Anatomy; Bhagoliwal A., Associate Professor, Deptt. of Obs & Gynae; S.P. Mathur, Professor & Head, Deptt. of Radiology; S.K. Arora, Professor, Deptt. of Skin & V.D.; R.K. Gupta, Professor & Head, Deptt. of Forensic Medicine, GSVM Medical College, Kanpur. In the said study, they had examined X-rays of pelvis of 202 individuals of both sexes between the ages of 10 to 22 years and fusion or calcification etc. to determine their age. In the table for appearance and union of the centre of Iliac crest, it is mentioned that union in the Iliac crest usually is found in 17.6% males in the age group of 16 to 17 years. In no cases, it was found to be fused in the age group below 16 years. In the conclusion, the said authors have stated that Iliac crest usually appears at the age of 16 years in the males and fuses with the iliac bone at the age 19 years. Fusion between the Iliac crest with the body of ilium bone in 50% cases takes place between the age group of 18 to 19 years however, in no cases fusion takes in males of less than 16 years in age.

10. In the second Article- Original Research Paper on Estimation of Age from Epiphyseal Fusion in Iliac Crest by Pardeep Singh, Assistant Professor, Peoples College of Medical Sciences, Bhopal; R.K. Gorea, Prof. & Head, Gian Sagar Medical College, Punjab; S.S. Oberoi, Associate Professor, G.M.C., Patiala and A.K. Kapila, Professor (Retd.), Govt. Medical College, Patiala, the authors had done a case study in 100 persons between age group of 16 to 25 years, who had been exposed to X-rays at Rajindra Hospital, Patiala, Punjab. In the case of

males, complete union was not seen in the all cases below 17 years of age. Complete union was seen in one out of 20 cases of males between 18-19 years, six out of 20 males between of 22-21 years and ten out of 20 of males between the age group of 22-23 years. On the basis of the said study, the authors came to the conclusion that epiphyses of iliac crest gets fused in most cases at the age of 22 to 23 years in both sexes and the earliest union occurs at the age of 19 years in males.

11. The third Article is a Research Paper on Radiological Study of Fusion of Iliac Crest by Digital Method prepared by Gaurang Patel, Assistant Professor & Head, Deptt. of Forensic Medicine & Toxicology, G.M.E.R.S. Medical College & Civil Hospital Sola, Ahmedabad; Dharmesh Shilajiya, Asso. Prof. BJMC, Ahmedabad; Ganesh Govekar, Prof. & Head, Govt Medical, Surat; Chandresh Tailor, Asst. Prof., and published in J Indian Acad Forensic Med. October-December 2011, Vol.33, No.4. In the said paper, reference is made to studies done in India by Galstaun in 1930 and 1937 on Bengali population (referred to in Modis Medical Jurisprudence & Toxicology), Bajaj in 1967 in Delhi and several others. It was observed that these studies were based upon routine X-rays method and were not using digital X-rays, which are of better quality. On the basis of the study, the authors have come to the conclusion that there are five stages. In the first stage, fusion is yet to start. In the second stage, fusion begins near one third of iliac crest. In the third stage, fusion is in the half of iliac crest. In the fourth stage, the iliac crest is fused in th part and in the last stage the fusion is complete. On the basis of findings recorded by them, they have concluded that complete fusion of Iliac crest with ilium occurs at the age of 19-20 years in males and 18-19 years in females in the Gujarat State population. The said study also records that this in accord with the prior studies conducted of Galstaun in Bengal and Kothari in Rajasthan.

12. In view of these articles/research papers, we feel that it will be appropriate and just to accept the two ossification test reports dated 22.01.1998 in the case of appellants Chob Singh and Ashok Kumar. However, the question still remains whether both of them should be treated as juveniles on the date of the offence, i.e., 25/26.07.1997 in view of the said reports.

13. In the case of appellant Chob Singh, we have the benefit of school records in the form of School Leaving Certificate Ex.CW1/A which records his date of birth as 01.08.1985. Ram Niwas, CW2, Shiksha Mitra, Primary School, Majhara, Shamshabad, Agra (UP) has proved on record the admission register Ex.CW2/A and the counterfoil of the School Leaving Certificate Ex.CW2/B. In view of the provisions of Rules 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007, the date of birth certificate from a school other than play school first attended should be given preference over medical opinion and it is only in the absence of matriculation or equivalent certificates, the date of birth certificate from the school first attended and date of birth certificate given by Corporation or a municipal authority or a panchayat that medical opinion can be referred to and relied. Learned Additional Public Prosecutor has submitted that the date of birth of appellant Chob Singh as per the school records is not based upon any documentary evidence. This may be so but we should accept the certificate in view of the fact that appellant Chob Singh was admitted in the said school on 02.09.1993 and his date of birth then recorded was 01.08.1985. In this context, observations of Supreme Court in *Ashwani Kumar Saxena v. State of M.P.*, (2012) 9 SCC 750 can be cited as pertinent: 32. Age determination inquiry contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order, that order shall be the conclusive proof of the age as regards such child or juvenile

in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of Rule 12. Further, Section 49 of the JJ Act also draws a presumption of the age of the juvenility on its determination.

35. We have come across several cases in which the trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted. Xxxx xxxx xxxx 38. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the Principal of school and having noticed the fact that the appellant was born on 24-10-1990, what prompted the court not to accept that admission register produced by the Principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11-22009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the school admission register. We are of the view that the above document produced by the Principal of the school conclusively shows that the date of birth was 24-10-1990, hence, Rules 12(3)(a)(i) and (ii) of the 2007 Rules have been fully satisfied. Xxxx xxxx xxxx 40. The legislature and the rule-making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time-limit of thirty days to determine the age of the juvenile from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his/her age on lower side within the margin of one year.

14. Even if we have some doubt about the said date of birth as it was recorded in the certificate, we are inclined to hold that appellant Chob Singh was a minor in view of the ossification report dated 22.01.1998. On the said aspect we may note that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides that the Court or the Juvenile Justice Board, as the case may be, for reasons to be recorded and if considered necessary give benefit to the child or juvenile by considering his/her lower age within the margin of one year. The Act and Rules being a beneficial legislation and keeping in view the medical papers/research papers which we have quoted above in detail, we accept that appellant Chob Singh was a minor and less than 18 years of age on the date of the occurrence. In *Arnit Das (1) v. State of Bihar* (2000) 5 SCC 488. Supreme Court held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. However, in the said case a view was taken that the date of production before the Juvenile Court was the date relevant in deciding whether the appellant was juvenile or not for the purpose of trial. The law laid down in *Arnit Das* (supra) to that extent was held to be not good law in *Pratap Singh v. State of Jharkhand* (2005) 3 SCC 551. wherein a five-Judge Bench of Supreme Court took the view that it was the date of the commission of the offence and not the date when the offender was produced before the competent court which was the relevant date for determining the juvenility. However, in *Ashwani Kumar Saxena* (supra) it has been noted that the observations in *Arnit Das* (supra) on first aspect is a binding precedent.

15. For similar reasons, in the case of appellant Ashok Kumar we accept that he was a minor, that is, less than 18 years of age on the date of the occurrence. The medical or ossification test report dated 22.01.1998 in his case is identical and same as that in the case of appellant Chob Singh. We note that appellant Ashok Kumar is illiterate and has not been to any school. He has put his thumb impression on his statement under Section 313, Criminal Procedure Code, 1973.

16. In view of the aforesaid decision we hold that the two appellants Chob Singh and Ashok Kumar were minor on the date of occurrence and they are entitled to benefit of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. The two appellants are present in court and, on instructions, learned Amicus Curiae states that the appellants accept their conviction but their sentence may be quashed. The statement is taken on record. We note that the appellants are not involved in any other criminal case. The appeals will accordingly be treated as disposed of. SANJIV KHANNA, J SIDDHARTH MRIDUL, J APRIL 09 2013 mk

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