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Firoj Vs. State

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Court : Delhi

Decided On : Jul-22-2013

Judge : G. S. Sistani

Appellant : Firoj

Respondent : State

Judgement :

$~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

22. h July, 2013 + CRL.A. 420/2013 FIROJ ..... Appellant Through Mr. Rahul Kumar, Advocate with Mr. Adit Pujari, Advocate. Appellant produced in custody. versus STATE ..... Respondent Through Ms. Richa Kapoor, APP CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE G.P. MITTAL JUDGMENT G.S.SISTANI J.

(ORAL) 1. Present appeal has been filed by the appellant, Firoj, under Section 374(2) of the Code of Criminal Procedure and is directed against the judgment dated 16.3.2012 and order on sentence dated 20.03.2012 by which the petitioner has been sentenced to rigorous imprisonment for life and fine of `10,000/- for the offence punishable under Sections 364A/34 IPC and in default of payment of fine, to undergo one year simple imprisonment. It was also directed that the period already undergone by the appellant during the trial of the case would be set off under Section 428 Cr.P.C.

2. On 28.05.2013, a Division Bench of this Court while hearing the present appeal passed the following order: We have been trying to ascertain and find the age of the appellant Firoz. In the MLC, Ex.PW16/A, his age is mentioned as 17 years. In the statement under Section 313, Code of Criminal Procedure, 1973, age of the appellant-Firoz has been mentioned as 27 years, but in the order on sentence, which is subsequent in point time, his age has been mentioned as 26 years. It is noticed that the appellant had affixed thumb impression in his Section 313 Cr.P.C. statement. Noticing the said facts, vide order dated 21st May, 2013, we had directed the mother and sister of appellant to produced documents relating to age of the elder brother of the appellant. Yesterday we had examined the said documents and found that the position is far from clear. Firoz Khan, elder brother of the appellant, had stated that he was born in the year 1971 but different dates are mentioned in the election I-card, ration card, etc. The appellant has two younger sisters, namely, Zarina and Nagina. Zarina has expired and Naginas date of birth as recorded in the school records is 1st September, 1987. In the AADHAAR Card, the year of birth of the appellant as recorded is 1982. We note that the date of offence is 11th/12th November, 2000. Status report filed by the police also does not clarify or remove the confusion. In view of the aforesaid position, we direct that ossification test be conducted to ascertain and know the age of the appellant. For the said purpose, the appellant will be produced before a medical board to be constituted by the Director, All India Institute of Medical Sciences. Relist on 22nd July, 2013. The medical board will try and submit their report by the said date. The appeal will not be treated as part-heard.

3. Pursuant to the order of 28.05.2013, a Medical Board constituted by the Director, All India Institute of Medical Sciences(AIIMS) has examined the appellant. The report of the Medical Board has been received. As per the Board, the present age of the appellant is 25-28 years. Accordingly, it may be safely assumed that on the date of the offence, i.e. 11.11.2000, the appellant was a juvenile.

4. Ms. Richa Kapoor, learned APP for the State submits that although the report is not in dispute, the same cannot be a taken as an authentic proof of age as it is difficult to ascertain the exact age in case a person is above 24 years. Thus, a

further inquiry should have been initiated and statements of the parents of the appellant and also copy of the Ration Card and Election Card should have been taken into consideration to determine the appellants age.

5. Rule 12(3)(a) and (b) of the Juvenile Justice(Care and Protection of Children) Rules, 2007 reads as under:

12. Procedure to be followed in determination of Age. ..... (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.

6. From a perusal of Rule 12 (3) of the Rules of 2007 it is evident that the certificates as mentioned in this Rule have to be relied in order of precedence. Thus, if a matriculation certificate is available the date of birth mentioned in any other certificate cannot be gone into. If a matriculation certificate is not available then date of birth as mentioned in the birth certificate from the school first attended is to be taken into consideration. If the said certificate is also not available then the date of birth certificate given by the Corporation or a Municipal Authority or Panchayat has to be considered. Clause (b) of Rule 12 (3) of the Rules of 2007 regarding medical evidence comes into operation only when the three certificates as mentioned in Rule 12 (3)(a) are not available. We are supported in this view by report of the Supreme Court in Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750.

7. We may notice that the Rules of 2007 do not permit taking into consideration any other form of document including ration card or election card for the reasons that these documents would be based on any of the certificate as mentioned Clause(a) of Rule 12(3) of the Rules of 2007 or otherwise the age would be mentioned only by approximation. Thus, the contention raised by the learned APP to consider these documents cannot be accepted.

8. Admittedly, the appellant has been in custody for over seven years, including the period of remission. The appellant has been produced in Court. The learned counsel for the appellant, on his (appellants) instructions, submits that he does not challenge the order of conviction. Counsel for the appellant further points out that in view of Section 19, the appellant will not suffer any disqualification on account of his conviction.

9. Since the appellant has already been incarcerated for more than three years, which would be the maximum period of detention which would have been awarded to the appellant being a juvenile, the appellant be released forthwith, unless wanted in any other case.

10. The Appeal is allowed in above terms.

11. A copy of the order be transmitted to the Superintendent Jail concerned for information and compliance.

12. Dasti. (G.S. SISTANI) JUDGE (G.P. MITTAL) JUDGE JULY 22 2013 pst/msr

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