

(2013) 11 CAL CK 0053

Calcutta High Court

Case No: C.R.R. 318 of 2013

Utpal Roy

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Nov. 7, 2013

Citation: (2014) CriLJ 620

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Anirban Banerjee and Debasish Mukhopadhyay, for the Appellant; Soubhik Mitra, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Joymalya Bagchi, J.

Order dated 16.11.2012 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Jalpaiguri in Sessions Case No. 43 of 2010 arising out of Bhaktinagar Police Station Case No. 556 of 2008 dated 01.04.2008 dated 01.04.2008 u/s 376(2)(F) of the Indian Penal Code has been assailed. The case of the petitioner is that he was a minor at the time of commission of the alleged offence, i.e. on 31.03.2008. Invoking section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act of 2000), the petitioner made a prayer before the trial court for referring the case to the Juvenile Board for inquiry under the said law. The petitioner relied on the date of birth entered in the admission register of the school where he studied and the transfer certificate issued by the said institution.

2. In the admission register, the date of birth of the petitioner has been recorded as 01.01.1991. The transfer certificate issued on 13.08.2007 also shows the date of birth of the petitioner as on 01.01.1991.
3. The learned Judge after considering the materials on record rejected the prayer of the petitioner on the ground that the ossification report stated that the age of the

petitioner was between 18 years, but below 20 years as on 01.12.2008 and also on the ground that there was no evidence on record to prove that the date of birth of the petitioner as reflected in the admission register was made on the basis of the statements of the parents of the petitioner/accused. The aforesaid order has been challenged before me.

4. Mr. Banerjee, learned Counsel appearing for the petitioner, has submitted that the learned Judge erred in law in holding that the entry of the date of birth of the petitioner in the admission register/transfer certificate militated against the finding in the ossification report.

5. He submitted that both the materials could, in fact, be harmoniously reconciled inasmuch as if the date of birth of the petitioner was taken as 01.01.1991, his age on 01.12.2008 would be almost 18 years, i.e. 17 years 11 months and, hence, there was hardly any difference the aforesaid pieces of evidence.

6. It was further submitted that no opportunity was given to the petitioner to examine his parents, which could have removed the doubt from the mind of the trial court as to the correctness of the age as reflected in the admission register/transfer certificate.

7. Mr. Mitra, learned Counsel appearing for the State, has submitted that it was within the domain of the petitioner to adduce such evidence, but he has failed to do so.

8. I have considered the submissions of the parties in the light of the materials of record.

9. It appears that there is hardly any difference between the age as appearing from the admission register/transfer certificate and that reflected from the ossification report. If the date of birth in the admission register is correct, then the age of the petitioner as on 01.12.2008 would be 17 years 11 months whereas the ossification report states his age to be between 18 years to 20 years.

10. It is settled law that medical opinion as to age of an individual is not an exact science, but the same is susceptible to a variation of 2 years on either side. That apart, ossification report in view of Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the said Rules), is subject to the date of birth as transpiring from the certificate from the school which the accused person first attended.

11. Rule 12(3) of the said Rules reads as follows:--

Rule 12(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, given 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.

12. In view of the aforesaid facts, I am of the opinion that the trial court ought to have gone into a more elaborate inquiry and examined the parents of the petitioner in order to ascertain the authenticity of the information furnished to the school authorities relating to the age of the petitioner instead of rejecting such evidence by relying on the ossification report although there is hardly any discernable conflict between the two pieces of evidence. It is true that the petitioner ought to have been more diligent and examined his parents before the trial court, but in view of the beneficial nature of the legislation, I am of the view that hyper technicalities ought not stand in the way of justice.

13. Accordingly, I set aside the impugned order and remand the matter to the trial court for further inquiry into the issue of juvenility of the petitioner. The petitioner is at liberty to adduce further evidence particularly by examining his parents in order to establish the authenticity of information relating to his date of birth furnished to the school authorities. The petitioner would also be at liberty to adduce any further or other evidence, as he may deem fit and proper in course of such inquiry in support of his claim. The inquiry shall be concluded within six weeks from the date of communication of this order and the learned Magistrate will pass appropriate orders thereon on the basis of the materials adduced before him. With the aforesaid directions, the instant revisional application is disposed of.