

(2011) 07 DEL CK 0470

Delhi High Court**Case No:** Criminal M.A. 19009 of 2010 and Criminal A. 384 of 2010

Toshif Ali @ Raju

APPELLANT

Vs

State (NCT) of Delhi

RESPONDENT

Date of Decision: July 6, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 15, 16, 2(1)
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12(3)

Hon'ble Judges: Veena Birbal, J; Badar Durrez Ahmed, J**Bench:** Division Bench**Advocate:** Ravindra Narayan, for the Appellant; Sanjay Lao, for the Respondent

Judgement

Badar Durrez Ahmed, J.

This is an application filed on behalf of the Appellant claiming that he was a juvenile in conflict with law as defined in Section 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the said Act") on the date of commission of the alleged offence, which was 16.04.2005. Inasmuch as no school record or municipal records were available insofar as the Appellant is concerned, which would have given us an indication about his age, the provisions of Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the said Rules") would apply. We have also noted that at the time of the arrest, the age of the Appellant has not been indicated in the arrest memo and at the time of recording of the statement u/s 313 of The Code of Criminal Procedure on 20.07.2009, the Appellant had given his age as 22 years. This fact has also been noted in our order dated 02.05.2011. We had also observed that on the date of occurrence that is on 16.04.2005, the age of the Appellant would, according to the age recorded in the said statement, work out to be around 18 years. It is in these circumstances that we had directed that the ossification test be conducted of the Appellant so as to determine his age and we had directed that the Appellant be

produced before the All India Institute of Medical Sciences on 06.05.2011 in the first instance and on other dates as directed by the Medical Superintendent of AIIMS. We had also required that the report be submitted to this Court.

2. We are now in receipt of a letter dated 17.06.2011 from the Medical Superintendent to the Registrar of this Court enclosing the original report of the Medical Board constituted by AIIMS for the medical examination (ossification test for determination of age) of the Appellant Toshif Ali @ Raju, son of Mohd.

Mukhtar. The report of the Medical Board is dated 15.06.2011. The Medical Board comprised of the following persons:

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| Dr
Sanjeev
Lalwani
Assoc.
Professor
of
Forensic
Medicine
Dr
Vijay
P.
Mathur
Assoc.
Professor
of
CDER
Dr
Smriti
Hari
Assoc.
Professor
of
Radiodiagnosis
Dr
Mahesh
R.
Deputy
Secretary
of
Hospital
Administration | 1.
Chairperson
2.
Member
3.
Member
4.
Member
5.
Secretary |
|---|--|

As per the report, according to the findings of the physical, dental and radiological examinations, the Medical Board was of the considered opinion that the bone age of the Appellant Toshif Ali @ Raju, son of Mohd. Mukhtar was between 25 years to 28 years.

3. Thus, as on 09.06.2011, the age of the Appellant on the lower end is determined to be 25 years. Since the date of the incident was 16.04.2005, this would make his age on the date of the incident to be approximately 18 years, 10 months and 7 days.

4. In view of our decision in the case of Jitender @ Jitu v. State in Crl. M.A. 15749/2010 and Crl. A. 438/2010, decided on 03.06.2011, a benefit of one year margin on the lower side is to be given in view of the provisions of Rule 12(3)(b) of the said Rules, in case the exact assessment of age cannot be done. We have also noted that in the present case the Medical Board has given a range of ages between 25 and 28 years and, therefore, the exact assessment of age is not possible. The court has discretion in giving this benefit of margin of one year on the lower side to the Appellant. Considering the circumstances of the present case and finding that they are more or less similar to that in the case of Jitender @ Jitu (supra), we feel that the benefit of one year on the lower side ought to be given to the present Appellant also. If we do that, the age of the Appellant on the date of the incident would be approximately 17 years, 10 months and 7 days, which would make him a juvenile in conflict with law inasmuch as his age would be less than 18 years on the date of the

incident. That being the position, we find that as the Appellant has already undergone imprisonment for over six years and two months, he cannot be detained any further inasmuch as even the maximum of three years detention period prescribed under the said Act has been exceeded. The learned Counsel for the Appellant has stated that the Appellant does not want to challenge the conviction and that it is only with regard to the sentence that he is seeking the benefit under the said Act. In view of the provisions of Section 15 and 16 of the said Act, the maximum period of detention, even in terms of the said Act, in respect of a juvenile in conflict with law could have been three years. Since the Appellant has already been in custody for more than three years, he is entitled to be set at liberty forthwith.

5. Consequently, this application as also the appeal are disposed of by maintaining the conviction and as such dismissing his appeal with regard to conviction, yet, with regard to the sentence the same is set aside and the Appellant is directed to be set at liberty. This application as well as the appeal stand disposed of accordingly.