

Toshif Ali @ Raju Vs State (NCT) of Delhi

Court: Delhi High Court

Date of Decision: July 6, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Juvenile Justice (Care and Protection of Children) Act, 2000 â€” Section 15, 16, 2(1)

Juvenile Justice (Care and Protection of Children) Rules, 2007 â€” 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:

1. Dr Sanjeev * *

Lalwani

* Assoc. Professor - Chairperson

of Forensic

Medicine

2. Dr Vijay P * *

Mathur

* Assoc. Professor - Member

of CDER

3. Dr Smriti Hari * *

* Assoc. Professor - Member

of Radiodiagnosis

4. Dr Mahesh R. * *

* Department of - Member Secy.

Hospital

Administration

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 CrI. M.A. 15749/2010 and CrI. 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.