
just one year prior to the taking of sample and the fact that his case is covered by the second proviso of section 16 of the Act, I am of the opinion that ends of justice will be met if the petitioner is let off on probation. The judgment of conviction is therefore maintained and the order of sentence is modified to the extent that the petitioner will be released on probation on his furnishing requisite bonds to show good conduct for a period of one year before the trial Magistrate within a period of one month from the date he receives certified copy of this judgment.

(19) This revision petition is, thus, partly allowed in the manner indicated above.

R.N.R.

Before Satish Kumar Mittal, J.

BALKAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CRL. R. NO. 1823 OF 2004

16th December, 2004

Juvenile Justice Act, 2000—Ss. 2(k), 12 & 18—Indian Penal Code, 1860—Ss. 302/365/34—FIR against petitioner & his two brothers—On investigation police finding petitioner innocent & framing no charge against him—After examination of complainant trial Court summoning the petitioner u/s 319 Cr. P.C.—Claiming himself to be a juvenile u/s 2(k), petitioner seeking concession of bail as well as separation of his trial from other co-accused—Petitioner producing two school leaving certificates to prove his status as juvenile—Trial Court ignoring the evidence merely on the basis of conjectures that the date of birth given at the time of admission in school is seldom correct & does not depict the actual age of the child—No contrary evidence regarding the age of petitioner led by the prosecution—No allegation that the school leaving certificates are not genuine—Evidence led by the petitioner clearly establishes that he was juvenile at the time of alleged occurrence—Petitioner held to be entitled for concession of bail & separation of trial.

Held, that the Juvenile Justice Act provides for justice after the onset of delinquency. Once a boy or girl has assumed delinquency, his or her treatment and trial at the hands of the justice delivery system is taken care of by the provisions of the Juvenile Justice Act. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of the child, and providing for prevention and treatment of juvenile delinquency, for care, protection etc. post-juvility. In short, the field when a juvenile having committed a delinquency is placed for being taken care of post-delinquency. Thus, the legislative aims and objectives go to show that this legislation has been made for taking care of and custody of a juvenile during investigation, inquiry and trial, i.e. from the point of time when the juvenile is available to the law administration and justice delivery system.

(Para 13)

Further held, that the view taken by the trial Court is not sustainable as the same is based on surmises and conjectures. The petitioner placed on record school certificates of 5th and 8th class, which were prepared and issued even prior to the date of alleged occurrence and according to the date of birth given therein, the petitioner was a juvenile on the day of alleged occurrence. It is not the case of the prosecution that these certificates are not genuine or are forged one. No contrary evidence regarding age of the petitioner has been led by the prosecution. Even no attempt was made by it to conduct the ossification test of the petitioner. The aforesaid certificates are the best evidence in absence of any entry in the office of Registrar, Births and Deaths. The trial Court has ignored the evidence merely on the basis of conjectures while observing that the date of birth given at the time of admission in school is seldom correct and does not depict the actual age of the child, as an attempt is made by the parents to under state the age of their child. The evidence led by the petitioner clearly establish that the date of birth of the petitioner is 15th November, 1987 and at the time of the alleged occurrence as well as on the date when he was ordered to be summoned to face trial u/s 319 Cr.P.C. he was juvenile. Thus, the finding recorded by the trial Court that the petitioner was not a juvenile is set aside.

(Para 15)

Further held, that the trial of a juvenile cannot be proceeded with the other accused as provided under Section 18 of the Juvenile Justice Act. Thus, the trial Court shall take necessary steps for separating trial of the petitioner and then proceed with the case.

(Paras 16 & 17)

Further held, that grant of bail to a juvenile is mandatory. Bail to him can only be declined if there are reasonable ground for believing that his release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Case of the petitioner does not fall in any of the aforesaid three exceptional grounds. The petitioner is an ordinary students of a village and his release will not bring him in bad company or expose him to moral, physical or psychological danger. Thus, keeping the petitioner in jail during the pendency of trial will defeat the very purpose and object of the Juvenile Justice Act. Thus, he is entitled to be released on bail.

(Para 19)

A.P.S. Deol, *Advocate, for the petitioner.*

Gurpartap Singh, Gill, AAG, Punjab, *for the respondent.*

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) Petitioner Balkar Singh has filed this revision petition challenging the order dated 24th August, 2004, passed by Addl. Sessions Judge, Mansa, dismissing the application filed by the petitioner for separating his trial from the other accused under Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Juvenile Justice Act), claiming himself to be a juvenile and for releasing him on bail under Section 12 of the Juvenile Justice Act.

(2) In this case, FIR No. 113 dated 28th December, 2002 was registered under Sections 308/366/34 IPC against the petitioner and his two brothers, namely Jagsir Singh and Wazir Singh, three days after the alleged occurrence, on the statement of Pargat Singh, brother of the deceased. As per the version in the FIR, on 25th December, 2002, the aforesaid three accused caused injuries to Bhola Singh, brother of the complainant, as they were suspecting that he was having illicit relations with their Bhabi'. It is alleged that Balkar Singh petitioner gave a dang blow, which hit Bhola Singh on his right flank above the stomach. Bhola Singh remained under treatment in Civil Hospital,

Mansa, from 27th December, 2002 to 29th January, 2003. Thereafter, he remained at his house, but on 20th March, 2003, he died. Thereupon, the offence under Section 302 IPC was added,—*vide* Rapat No. 10 dated 20th March, 2003.

(3) During the investigation, the petitioner was found innocent by the police, as his participation in the occurrence was not substantiated by any evidence, therefore, he was kept in column No. 2.

(4) After presentation of challan, charge under Sections 320/365 IPC was framed against the other two accused i.e. Jagsir Singh and Wazir Singh. Subsequently, after the examination of the complainant, petitioner was summoned under Section 319 Cr. P.C. to face trial along with other co-accused.

(5) Pursuant to the summoning order, the petitioner surrendered before the trial court and moved an application under Sections 12 and 18 of the Juvenile Justice Act for grant of bail as well as for separation of his trial from the other accused being a juvenile. The petitioner was taken into custody and he was ordered to be released on interim bail,—*vide* order dated 28th May, 2004. He was also provided an opportunity to produce evidence regarding his status as juvenile.

(6) The petitioner claimed his date of birth as 15th November, 1987. In support of his plea, he examined himself as AW.1 and stated his date of birth as 15th November, 1987 on the basis of two school leaving certificates of Class 5th and 8th, Ex.A1 and Ex.A2. The 5th Class certificate was issued by the Education Department under the signatures of District Education Officer (Primary) Mansa, wherein his name and father's name and residence has been given to be the same and the date of birth has been certified to be 15th November, 1987. The second certificate of Class 8th was issued by Punjab School Education Board, wherein his date of birth has been recorded as 15th November, 1987. The petitioner also examined Gurdev Singh, S.S. Teacher of Government Senior Secondary School, Jhunir, as AW.2, who stated that the petitioner is a student in the above said school in Class 10. He further stated that the petitioner was got admitted by his mother,—*vide* admission form, copy of which is Ex.A3. He also produced copy of certificate for passing 5th class as Ex.A4. He further stated that as per the admission and discharge register, which is maintained by the Principal of the School, copy of which was proved as Ex.A5, date of birth of the petitioner is 15th November, 1987.

(7) Contrary to this, the prosecution neither led any evidence whatsoever nor any attempt was made by it to conduct ossification test of the petitioner.

(8) On the basis of the aforesaid evidence, the petitioner claimed himself to be a juvenile under Section 2 (k) of the Juvenile Justice Act, being a person who has not completed 18 years of age as per the two school leaving certificates. In view of the above date of birth, age of the petitioner, at the time of the alleged occurrence, comes to 15 years one month. But his claim was rejected by the Court of Additional Sessions Judge on the ground that the date of birth given at the time of admission in school is seldom correct and does not depict the actual age of the child as an attempt is made by the parents to under state the age of their child, therefore, no definite conclusion can be drawn from an entry made in the school admission register. In this regard, the following observations were made :—

“It is a matter of common knowledge that the date of birth given at the time of admission of a boy or a girl in school is seldom correct and more often that not the age given is less than the actual date of the child joining a school. An attempt is made by the parents of the children to understate their ages and to give a later date of birth than the real one. Therefore the Court cannot ignore this fact while assessing the value of an entry of date of birth in school admission register and it would be improper for the court to base any conclusion on the basis of that entry. The age given in an admission form is by no means a conclusive test. Entries in school registers are of little value as evidence of age, as was observed in case **Jai Narain versus The State of Haryana, 1974, C.L.R. xv.** Similarly, our own Hon'ble High Court recently in case **Harpal versus State of Haryana, 2004 (1) RCR (CrI) 480** observed that school leaving certificate cannot be believed in absence of any other evidence such as Register of village Chowkidar.”

(9) Feeling aggrieved against the aforesaid order, the petitioner has filed the instant revision petition.

(10) Learned counsel for the petitioner, while relying upon judgment of the Hon'ble Supreme Court in **Bhoop Ram versus State of U.P. (1)**, submitted that the impugned order passed by the trial court is liable to be set aside as it runs contrary to the observations made by the Hon'ble Apex Court. While dealing with the case of juvenile based on the school certificate, Hon'ble Apex Court held that in absence of anything showing that the entries in the school leaving certificate did not relate to the accused or were incorrect, the same cannot be rejected on the basis of surmise that generally parents understate the age of their children at the time of admission to school. In the absence of any independent material, nothing should prevail over the entries in school certificate. Learned counsel for the petitioner contended that in this case, the petitioner has not only placed on record the documentary evidence in the shape of school leaving certificate, but he has also led the oral evidence, which clearly establish that on the date of alleged occurrence and on the date, when the petitioner was summoned to face trial, he was a juvenile. He further contended that all this evidence was not controverted by the prosecution nor any contrary evidence has been led and the learned trial court rejected the claim of the petitioner merely on the basis of conjectures and surmises. Learned counsel, while referring to another decision of the Hon'ble Supreme Court in **Rajinder Chandra versus State of Chhattisgarh, (2)**, has submitted that the Court dealing with the question of determining the age of the accused for the purpose of finding out whether he is a juvenile or not, a 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 may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile. In view of these submissions, learned counsel for the petitioner submitted that the view taken by the learned trial court is totally contrary to the aforesaid principle of law and the impugned order is liable to be set aside.

(11) On the other hand, learned counsel for the respondent—State submitted that the trial court has recorded a finding after appreciation of the evidence, which is not to be interfered in the revisional jurisdiction. He submitted that the evidence produced by

(1) 1989 S.C.C. (CrI.) 486

(2) 2002 (1) R.C.R. 586

the petitioner before the trial court is not reliable and on the basis of such evidence and in absence of a certificate from the Registrar, Births and Deaths, correct age of the petitioner cannot be ascertained and he should not be held to be a juvenile. In support of his contention, counsel for the respondent relied upon **Jaipal Singh versus State of Haryana (3)**, and **Harpal versus State of Haryana (4)**, wherein it was held that the school certificates cannot be taken as the proof of the age of the presecutrix.

(12) In compliance with direction of the Hon'ble Supreme Court in **Sheela Barse versus Union of India (5)**, the Juvenile Justice Act, 1986 was enacted which has now been repealed by the Juvenile Justice Act, 2000, which has come into force with effect from 1st April, 2001. The Juvenile Justice Act, as its Preamble speaks, aims at achieving the object to lay down legal framework for juvenile justice in the country so as to ensure that no child under any circumstance is lodged in jail or police lock up. This is being ensured by establishing Juvenile Justice Welfare Board and juvenile courts.

(13) The Juvenile Justice Act provides for justice after the onset of delinquency. Once a boy or a girl has assumed delinquency, his or her treatment and trial at the hands of the justice delivery system is taken care of by the provisions of the Juvenile Justice Act. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of the child; and providing for prevention and treatment of juvenile delinquency, for care, protection etc. post-juvencity. In short the field sought to be covered by the Act is not the one which had led to juvenile delinquency but the field when a juvenile having committed a delinquency is placed for being taken care of post-delinquency. Thus the legislative aims and objectives go to show that this legislation has been made for taking care of and custody of a juvenile during investigation, inquiry and trial, i.e. from the point of time when the juvenile is available to the law administration and justice delivery system.

(3) 2003 (2) R.C.R. (Criminal) 311

(4) 2004 (1) R.C.R. (Criminal) 481

(5) AIR 1986 S.C. 1773

(14) In **Gopinath Ghosh versus State of West Bengal (6)**, **Bhola Bhagat versus State of Bihar (7)** and **Santenu Mitra versus State of West Bengal (8)**, which have been reiterated in **Arnit Das versus State of Bihar (9)** the Hon'ble Apex Court laid down following propositions :—

- (i) the technicality of the accused having not claimed the benefit of the provisions of the Juvenile Justice Act at the earliest opportunity or before any of the courts below should not, keeping in view the intendment of the legislation, come in the way of the benefit being extended to the accused-appellant even if the plea was raised for the first time before the Supreme Court ;
- (ii) a hypertechnical 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 may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases; and
- (iii) the provisions of the Act are mandatory and while implementing the provisions of the Act, those charged with responsibilities of implementation should show sensitivity and concern for a juvenile.

(15) Applying the aforesaid propositions of law to the facts of the present case, the views taken by the trial court is not sustainable as the same is based on surmises and conjectures. The petitioner placed on record school certificates of 5th and 8th class, Ex.A1 and Ex.A2, which were prepared and issued even prior to the date of alleged occurrence and according to the date of birth given therein, the petitioner was a juvenile on the day of alleged occurrence. It is not the case of the prosecution that these certificates are not genuine or are forged one. No contrary evidence regarding age of the petitioner has been led by the prosecution. Even no attempt was made by it to conduct the ossification test of the petitioner. The aforesaid certificates

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- (6) 1984 S.C.C. (Cr.) 478
 - (7) (1997) 8 S.C.C. 720
 - (8) (1998) 5 S.C.C. 697
 - (9) (2000) 5 S.C.C. 488

are the next best evidence in absence of any entry in the office of Register, Births and Deaths. Melo Kaur, mother of the petitioner, while appearing as AW.3, has stated that the petitioner was born at village Dhanpur, the house of her parents, and she belongs to Majbi Sikh caste. Thus, no entry was made with the Registrar, Births and Deaths. Therefore, no birth certificate could be available. The petitioner has also examined a school teacher, who has categorically stated that the petitioner is a student of 10th class. He also proved his date of birth, as per the school record. All this evidence cannot be ignored in absence of any contrary evidence. The trial court has ignored these evidence merely on the basis of conjectures while observing that the date of birth given at the time of admission in school is seldom correct and does not depict the actual age of the child, as an attempt is made by the parents to under state the age of their child. In support of this conclusion, the learned trial court has relied upon judgment of this Court in **Harpal versus State of Haryana (supra)**, while is not at all applicable to the facts of the present case, as it pertains to the case where age of the prosecutrix in a rape case was in question. The ratio of that judgment cannot be made applicable to the present case, which is for determining the age of an accused under the Juvenile Justice Act, in which a hyper-technical approach should not be adopted while appreciating the evidence produced on behalf of the accused. The Hon'ble Supreme Court in **Rajinder Chandra's case (supra)** has clearly laid down that where two views are possible on evidence regarding age of the accused to find out as to whether he is a juvenile or not, the court should lean in favour of holding the accused to be a juvenile. While determining the factum of age and appreciating the evidence led in this regard, the court should keep in mind the aim and object for which the Juvenile Justice Act has been enacted. In this case, the learned trial court did not appreciate the evidence led by the prosecution in its right perspective and has come to a perverse conclusion. In my opinion, the evidence led by the petitioner, as discussed above, clearly establish that the date of birth of the petitioner is 15th November, 1987 and at the time of the alleged occurrence as well as on the date when he was ordered to be summoned to face trial under Section 319 Cr. P.C., he was juvenile. Thus, the finding recorded by the trial court that the petitioner was not a juvenile is set aside.

(16) In view of the aforesaid finding, the trial of a juvenile cannot be proceeded with the other accused, as provided under Section 18 of the Juvenile Justice Act, which reads as under :—

18. No joint proceeding of juvenile and person not a juvenile :—(1) Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence togetherwith a person who is not a juvenile.

(2) If a juvenile is accused of an offence for which under Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.

(17) In view of the aforesaid provision, the trial court shall take necessary steps for separating trial of the petitioner and then proceed with the case.

(18) Now, the question arises whether the petitioner is entitled to be released on bail. In this regard, Section 12 of the Juvenile Justice Act reads as under :—

12. Bail of juvenile :—(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

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- (2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.
- (3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

(19) In view of the aforesaid, grant of bail to a juvenile is mandatory. Bail to him can only be declined if there are reasonable grounds for believing that his release is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. In the present case, in my opinion, case of the petitioner does not fall in any of the aforesaid three exceptional grounds. As per allegations in the FIR, the petitioner and his two brothers are alleged to have caused injuries to the deceased on account of the motive that they were suspecting that he was having illicit relations with their Bhabi. Admittedly, the petitioner is a first offender and is not involved in any other criminal case. Before his arrest, he was living with his family. His co-accused have already been released on bail. During investigation, he was found innocent and was kept in column No. 2. However, subsequently, on an application under Section 319 Cr.P.C., moved by the prosecution, he was summoned by the trial court. After dismissal of his application, he is confined in Central Jail, Bathinda alongwith hardened criminals. The petitioner is an ordinary student of a village and his release will not bring him in bad company or expose him to moral, physical or psychological danger. Thus, in my opinion, keeping the petitioner in jail during the pendency of trial will defeat the very purpose and object of the Juvenile Justice Act. Thus, he is entitled to be released on bail.

(20) In view of the aforesaid discussion, this revision petition is allowed; the impugned order dated 24th August, 2004, passed by Additional Sessions Judge, Mansa, is set aside; the trial court is directed to take necessary steps for separating trial of the petitioner and to release the petitioner on bail subject to his furnishing bail bonds to its satisfaction.