

Before Nirmaljit Kaur, J.

SURENDER,—Petitioner

versus

STATE OF HARYANA,—Respondent

Criminal Revision No. 640 of 2011

19th April, 2011

Indian Evidence Act, 1872—S. 35—Juvenile Justice (Care and Protection of Children) Rules, 2007—Rl. 12(3)—Birth & Deaths Registration Act, 1969—S. 17—FIR registered against petitioner and co-accused—During trial petitioner filed an application for accepting date of birth as mentioned in Birth Certificate issued U/s 17 & under Rule 8 of Birth and Death Registration Act,—Court dismissed application and relied on entry in matriculation certificate by which he was a major at that time—Revision Petition allowed holding that birth certificate issued by appropriate authority being public document must be preferred over matriculation certificate showing date of birth—Same is admissible as evidence U/s 35 of Evidence Act.

Held, that the birth certificate issued by the Registrar (Birth & Deaths) under Section 17 of the Birth and Deaths Registration Act, 1969 is on the basis of official register and the said entry is made by a public servant in the discharge of his official duty. The said certificate satisfies all conditions U/s 35 of the Evidence Act.

(Para 9)

Further held, it is apparent that while framing Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it could not have been the intention of the legislature to ignore the primary evidence in the form of birth certificate issued by its own appropriate authority U/s 17 of the Birth & Deaths Registration Act, in preference to the school leaving certificate. In fact, Rule 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 has to be restored to for determining the age of

juvenile in the absence of the certificate issued by the appropriate issuing authority under the Births and Deaths Registration Act, 1969, which is a primary document and proof and admissible under Section 35 of the Indian Evidence Act.

(Para 15)

NIRMALJIT KAUR, J.

(1) This is a revision against the order dated 10th February, 2011 passed by the Additional Sessions Judge, Hissar, whereby, the Additional Sessions Judge, Hissar has dismissed the application filed by the present petitioner to declare him as juvenile.

(2) Facts of the case are that FIR No. 260, dated 13th July, 2009 under Sections 323, 506, 307, 34 IPC at Police Station Narnaund, District Hissar has been registered against the present petitioner along with his co-accused. During the pendency of the aforesaid case, the present petitioner has filed an application before the trial Court that his date of birth is 16th September, 1991 as per the birth certificate issued by the Registrar (Birth and Deaths) under Rule 8. Thus, at the time of commission of the aforesaid offence, he was minor and juvenile as his age was 17 years and 10 months. However, the trial Court dismissed the application filed by the present petitioner *vide* order dated 10th February, 2011. Instead of relying on the Birth Certificate issued by the appropriate authority under Section 17 of the Birth and Deaths Registration Act, 1969, gave weightage to the entry of Date of Birth in the Matriculation Certificate of the petitioner. The said impugned order has been challenged by the petitioner on the following grounds :

- (a) that the date of birth recorded by the birth certificate issued by the competent authority as per Rule 8, is *per se* admissible in evidence and the same need not be proved in any manner. Moreover, the date of birth recorded in the birth certificate is admissible as per Section 35 of the Indian Evidence Act, 1872.
- (b) that the date of birth recorded in the school entries is not admissible as per provisions laid down under Section 35 of the Indian Evidence Act, 1872 and this fact has also been proved and settled by Hon'ble the Supreme Court of India in SLP (Crl.) No. 6629 of 2006, decided on 12th March, 2010 titled as **Jabar Singh versus Dinesh and another.**

- (c) that the respondent failed to bring on record as on what basis and from which document the date of birth of the petitioner was recorded in the school certificate and in absence thereof, no reliance can be placed on the school entries as the same is inadmissible.
- (d) that as per the date of birth recorded in the birth certificate i.e. 16th September, 1991, the present petitioner was 17 years 10 months at the time of commission of offence and the date of birth recorded in the school certificate which was relied by the trial Court is 3rd June, 1991 and as per this, the present petitioner was 18 years and 01 month at the time of commission of the alleged offence. Thus, it is a case of border line and the benefit of being juvenile should be given to the present petitioner in view of the judgments of Hon'ble the Apex Court of India.

(3) Learned counsel for the respondent-State while opposing the same, submitted that there was no illegality in the order passed in view of Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, wherein, a priority was given to Matriculation Examination Certificate. It was further contended that the petitioner failed to produce the register of the Chowkidar in which the date of birth was alleged to have been recorded by him therefore, the date of birth as 16th September, 1991 allegedly recorded by the Chowkidar cannot be taken into consideration while determining the age of the petitioner.

(4) Heard.

(5) In the present case, the competent authority issued the Date of Birth Certificate under Section 17 of the Birth and Deaths Registration Act, 1969. The date of birth recorded in the said certificate is 16th September, 1991, whereas, Rule 12(3) 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 death 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.

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.”

(6) No doubt that the above Rule contemplates that in order to determine the age, the matriculation or equivalent certificates or the date of birth certificate issued by the School or birth certificate issued by the Corporation or a Municipal Authority shall be considered in that order, whereas, the fact remains that the Hon'ble Apex Court in number of cases has repeatedly held that the conclusive evidence for any persons age is his/her birth certificate.

(7) Thus, the short issue involved in the present case is as to whether the entry of the date of birth recorded in the School Certificate is to be given preference over the entry in the date of birth recorded in the Birth Certificate issued by the Registrar (Birth and Deaths) under the Deaths Registration Act, 1969 or not.

(8) Hon'ble the Apex Court in the case of **Ravinder Singh Gorkhi versus State of U.P. (1)**, held that the entry of date of birth in school record is merely a piece of evidence and it is not a proof of age in absence of material on which age was recorded and further went on to held in para 21 as under :—

“21. Section 35 of the Evidence Act would be attracted both in civil and criminal proceedings. The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding. Unless specifically provided for, in terms of Section 35 of the Evidence Act, the register maintained in ordinary course of business by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which, *inter alia*, such register is kept would be a relevant fact, Section 35, thus, requires the following conditions to be fulfilled before a document is held to be admissible thereunder : (i) it should be in the nature of the entry in any public or official register ; (ii) it must state a fact in issue or relevant fact ; (iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country ; and (iv) all persons concerned indisputably must have an access thereto.”

(9) Thus, the Birth Certificate issued by the Registrar (Birth and Deaths) under Section 17 of the Birth and Deaths Registration Act, 1969 is on the basis of official register and the said entry is made by a public servant in the discharge of his official duty. The said certificate satisfies all conditions under Section 35 of the Evidence Act.

(10) Hon'ble the Supreme Court in the case of **Jabar Singh versus Dinesh and another (2)** while referring to the School Records and Transfer Certificates, held that the said documents do not satisfy the conditions laid down in Section 35 of the Evidence Act by observing in para 12 as under :—

“12. We are of the considered opinion that the High Court was not at all right in reversing the findings of the trial court in exercise

(1) 2006 (3) RCR (Cr.) 156

(2) 2010 (2) RAJ 252

of its revisional jurisdiction. The entry of date of birth of Respondent No. 1 in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the Evidence Act inasmuch as the entry was not in any public or official register and was not made either by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country and, therefore, the entry was not relevant under Section 35 of the Evidence Act for the purpose of determining the age of Respondent No. 1 at the time of commission of the alleged offence.”

(11) On the other hand, the Single Bench of Orissa High Court in the case of **Bikram Ray versus Smt. Jema Hembram and another (3)**, held as under :—

“6. xxx xxx In **Mayadhar Nayak versus Sub Divisional Officer, Jaipur and others, 54 (1982) CLT 265**, this Court has held that the entries in birth and death registers are public documents and are admissible under section 35 of the Evidence Act. The Court further held that it is not necessary to prove who made the entries and what was the source of information. The Court further held that the register being a public document, presumption of correctness attaches to it and heavy onus lies on the party who want to dispute the presumption. In **Siba Prasad Jena versus Puspanjali Jena and another, 2007 (59) AIC 724 (Ori., H.C.)** this Court further held that the birth certificate is the extract of the register of births and deaths maintained by the health centre. The register is maintained in Form No. 11 in accordance with Rule 13 of the Orissa Registration of Births and Deaths Rules, 1970. Therefore, birth certificate is admissible as a public document. The Court further held that when birth certificate has been issued by the Register of Births and Deaths, it should be treated as a public document issued on the basis of the register maintained under the Registration of Births and Deaths Act, 1969. Therefore, no formal proof is necessary.”

(12) Similar view was also held by the Rajasthan High Court in the case of **Jecta@ Jitendra versus State (Rajasthan) (4)**. The entry of the date of birth in the Birth Certificate issued by Registrar (Birth and Deaths) is a primary evidence.

(13) In the present case, the said certificate was ignored on the ground that the Chowkidar along with register has not been examined to prove date of birth recorded in Chowkidar register nor any person has been examined from the Registrar, Births and Deaths to prove as to on what basis the aforesaid date of birth of accused has been recorded in their record. This view is contrary to the law laid down in various judicial pronouncements by Hon'ble the Apex Court. This question has been well settled by the Hon'ble Apex Court in the case of **Harpal Singh and another versus State of Himachal Pradesh (5)**, by holding that certified copy of entry of date of birth in the register of Births and Deaths is clearly admissible under Section 35 of the Evidence Act and, therefore the examination of the official, where the certificated copy of the Birth Certificate is produced, was not necessary. Para 3 of the said judgment is relevant and is reproduced as under :—

- “3. In the instant case the prosecution has proved the age of the girl by overwhelming evidence. To begin with, there is the evidence of Dr. Jagdish Rai (PW 14) who is a radiologist and who after X-Ray examination of the girl found that she was about 15 years of age. This is corroborated by Ex. PF, which is an entry in the admission register maintained at the Government Girls High School, Samnoli (wherein the girl was a student) and which is proved by the Head Master. That entry states the date of birth of the girl as 13th October, 1957. There is yet another document, viz., Ex PD, a certified copy of the relevant entry in the birth register which shows that Saroj Kumari who according to her evidence was known as Ramesh during her childhood, was born to Lajwanti wife of Daulat Ram on 11th November, 1957. Mr. Hardy submitted that in the absence of the examination of the officer/chowkidar concerned who recorded the entry, it was inadmissible in evidence. We cannot

(4) 2010 (3) RCR (Cr.) 608

(5) 1981 Cr. L.J. 1

agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under Section 35 of the Evidence Act and that it is not necessary for the prosecution to examine its author. From whatever angle we view the evidence, the conclusion is inescapable that Saroj Kumari was below 16 years of age at the time of the occurrence. Accordingly, we agree with judgments of the courts below and see no merit in this appeal which is dismissed.”

(14) It is not disputed in the present case that the petitioner had produced the original/certified copy of the Birth Certificate. As such, the same is admissible in evidence as per Section 35 of the Indian Evidence Act, 1872 and accordingly it was not required to prove the same by producing the Chowkidar or the official who entered the same.

(15) In view of the above discussion it is apparent that while framing Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000, it could not have been the intention of the legislature to ignore the primary evidence in the form of Birth Certificate issued by its own appropriate authority under Section 17 of the Birth and Deaths Registration Act, 1969 in preference to the School Leaving Certificate. In fact, Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has to be resorted to for determining the age of juvenile in the absence of the certificate issued by the appropriate issuing authority under the Births and Deaths Registration Act, 1969, which is a primary document of proof and admissible under Section 35 of the Indian Evidence Act, 1872.

(16) Thus, the trial Court seems to have committed grave error in determining the age of the petitioner on the basis of School Leaving Certificate ignoring the birth certificate issued by an appropriate authority.

(17) In view of the above, this Court arrives at the inescapable conclusion that the petitioner was under 18 years of age at the time of commission of offence and hence juvenile on the date of offence.

(18) For the reasons stated above, the revision petition filed by the petitioner is allowed and the impugned order dated 10th February, 2011 passed by the Additional Sessions Judge, Hisar is, hereby, set aside.