

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 177 OF 2018

RAHUL KUMAR YADAV

.....Appellant(s)

VERSUS

THE STATE OF BIHAR

.....Respondent(s)

WITH

CRIMINAL APPEAL NO. 214 OF 2018

Juvenile Justice (Care and Protection of Children) Act, 2000--- section 7-A --- Juvenile Justice (Care and Protection) Act, 2015--section 9(2)---Appellant convicted under section 302 IPC and was awarded life imprisonment--plea made on behalf of the appellant in the trial Court and High Court claiming that he was a juvenile on the date of the incident dismissed—Held-- proviso to Section 9(2) of the JJ Act, 2015 clearly enumerates that plea of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case--before the trial Court, the birth certificate was presented and a plea for determination of age was raised -- plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry in accordance with the provisions of the JJ Act, 2000 or the JJ Act, 2015-- Additional Sessions Judge-I, Darbhanga directed to conduct a thorough inquiry to determine the age/date of birth of the appellant within 12 weeks and submit report.



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RAHUL KUMAR YADAV**.....Appellant(s)****VERSUS****THE STATE OF BIHAR****....Respondent(s)****WITH****CRIMINAL APPEAL NO. 214 OF 2018****ORDER****Mehta, J.****Criminal Appeal No. 177 of 2018**

1. This appeal is preferred by the appellant-Rahul Kumar Yadav assailing the judgments dated 30th April, 2014 and 29th

June, 2017 passed by the learned Division Bench of Patna High Court in Criminal Appeal No. 518 of 2013.

2. The appellant and the co-accused were tried by the learned first Additional Sessions Judge, Darbhanga(hereinafter being referred to as the 'trial Court') in Sessions Trial No. 441 of 2011 for the offences punishable under Sections 302 and 394 of the Indian Penal Code, 1860(hereinafter being referred to as 'IPC') and Section 27(2) of the Arms Act, 1959. The trial Court, vide judgment dated 9th April, 2013, convicted the appellant and the co-accused for the offences stated above and qua the charge under Section 302 IPC, awarded death sentence to them.

3. The accused assailed the said judgment by filing an appeal before the Patna High Court. A reference under Section 366 of Code of Criminal Procedure, 1973 was also made by the trial Court for confirmation of the death sentence. The learned Judges of the Division Bench of the Patna High Court, gave a split opinion vide judgment dated 30th April, 2014 with one of the learned judges opining that the appeal was devoid of merit and other learned judge opining that the appeal deserves to be allowed and the accused were entitled to be acquitted by giving

them the benefit of doubt. In view of the difference of opinion between the learned Judges of the Division Bench, the matter was referred to the third learned Single Judge of the Patna High Court who dismissed the appeal vide judgment dated 29th June, 2017 but commuted the death sentence awarded to the appellant and the co-accused to life imprisonment.

4. It may be stated here that even before the case was committed, the appellant herein had moved an application under Section 7-A of the Juvenile Justice(Care and Protection of Children) Act, 2000(hereinafter, being referred to as JJ Act, 2000) before the learned Chief Judicial Magistrate claiming that he was a juvenile as on the date of the incident, i.e., 27th July, 2011. In the said application, reliance was placed by the appellant on his own horoscope. However, the Chief Judicial Magistrate proceeded to reject the said application.

5. When the matter was committed by the Chief Judicial Magistrate to the trial Court, a fresh petition under Section 7-A of the JJ Act, 2000 was filed by the appellant claiming himself to be a juvenile in conflict with law which was rejected vide order dated 28th November, 2011 considering the fact that earlier the Chief

Judicial Magistrate had rejected a similar application preferred by the appellant.

6. While addressing the Court in this appeal, Shri Rauf Rahim, learned senior counsel representing the appellant, at the outset, submitted that the plea made on behalf of the appellant in the trial Court claiming that he was a juvenile on the date of the incident was dismissed in an absolutely perfunctory manner without holding proper inquiry and simply on the ground that the same prayer had been turned down by the learned Chief Judicial Magistrate earlier.

7. Even in the appeal before the High Court, a pertinent plea was raised on behalf of the appellant that he was a juvenile on the date of the incident and thus, the proceedings undertaken against him in the trial Court were vitiated. However, the High Court also failed to advert to the said prayer. He thus urged that an inquiry should be directed to determine the age of the appellant so as to decide his plea of juvenility as per law.

8. *Per contra*, Shri Azmat Hayat Amanullah, learned counsel for the State opposed the submissions of Shri Rauf Rahim and

urged that the highly belated plea of juvenility raised on behalf of the appellant should not be entertained by this Court.

9. We have given our thoughtful consideration to the submissions advanced on behalf of the appellant and have also gone through the material available on record.

10. Indisputably, during the pendency of the appeal before the Patna High Court, the Juvenile Justice (Care and Protection) Act, 2015(hereinafter being referred to as the 'JJ Act 2015') had come into force which provides a comprehensive mechanism to consider the prayer of juvenility raised on behalf of an accused claiming to be a child on the date of the commission of the offence. The proviso to Section 9(2) of the JJ Act, 2015 clearly enumerates that plea of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case. The High Court, however, did not consider and decide the prayer of juvenility raised on behalf of the appellant.

11. There are catena of decisions of this Court which hold that the plea of juvenility, even if not taken before the trial Court or the High Court, can be raised before this Court.

12. Guidelines laying down the standards for evaluating the claim of juvenility raised for the first time before this Court were laid down by this Court in the case of ***Abuzar Hossain vs State of West Bengal***¹ which are reproduced hereinbelow:-

“39. Now, we summarise the position which is as under:

39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh* [(2009) 7 SCC 415] and *Pawan* [(2009) 15 SCC 259] these documents were not found prima facie credible while in *Jitendra Singh* [(2010) 13 SCC 523] the documents viz. school leaving certificate, marksheet and the medical report were treated

¹ (2012) 10 SCC 489

sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

40. The reference is answered in terms of the position highlighted in paras 39.1. to 39.6. The matters shall now be listed before the Bench(es) concerned for disposal.”

13. In the case of ***Vinod Katara v. State of Uttar Pradesh***², this Court directed the concerned Sessions Court to inquire regarding the age of the accused as per law, even though, he had crossed the age of 50 years and his appeal against conviction was rejected by this Court taking into consideration the aspect regarding the determination of plea of juvenility at the belated

² 2022 SccOnLine SC 1204

stage. The relevant extracts from the said judgment are as follows: -

“51. Ideally, there should not be any dispute as to the age of a person if the birth is registered in accordance with law and date of birth is entered in the school records on the basis of genuine record of birth. However, in India, the factors like poverty, illiteracy, ignorance, indifference and inadequacy of the system often lead to there being no documentary proof of a person's age. Therefore, in those cases where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to for age determination in absence of the documents enumerated in Section 94 of the Act 2015. The rule allowing plea of juvenility to be raised at a considerably belated stage has its rationale in the contemporary child rights jurisprudence which requires the stakeholders to act in the best interest of the child.

54. Awareness about the rights of the child and correlated duties remain low among the functionaries of the juvenile justice system. Once a child is caught in the web of adult criminal justice system, it is difficult for the child to get out of it unscathed. The bitter truth is that even the legal aid programmes are mired in systemic bottlenecks and often it is only at a considerably belated stage of the proceeding that the person becomes aware of the rights, including the right to be differently treated on the ground of juvenility.

55. What needs to be kept in mind is the main object and purpose of the Juvenile Justice Act. The focus of this legislation is on the juvenile's reformation and rehabilitation so that he also may have an opportunity to enjoy as other children. In *Pratap Singh* (supra), this Court, elaborating on the objects and purpose of the Juvenile Justice Act, made the following observations:—

“...The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both

the offender and the offence including the victim should be safeguarded...”

14. In the present case, the appellant filed an application at the earliest point of time raising the claim of juvenility based on a horoscope before the learned Chief Judicial Magistrate. The said application was rejected. However, before the trial Court, the birth certificate was presented and a plea for determination of age was raised. Learned trial Court rejected the said prayer by observing that even though the birth certificate was issued in the year 1995, the same was not presented along with the application filed earlier before the learned Chief Judicial Magistrate.

15. On going through the record, we find that proper inquiry in accordance with the provisions of the JJ Act, 2000 or the JJ Act, 2015 was not carried out so to consider the prayer made by the appellant to be treated as juvenile on the date of the incident even though the plea was raised at the earliest opportunity. It can be said without a cavil of doubt that the plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry.

16. In the wake of the above discussion, we hereby direct that the learned first Additional Sessions Judge, Darbhanga shall

conduct a thorough inquiry to determine the age/date of birth of the appellant in accordance with the procedure provided under the JJ Act, 2015 and the rules framed thereunder.

17. The Station House Officer of the police station concerned shall provide full assistance to the learned first Additional Sessions Judge in the process of collection of documents/evidence so as to facilitate the inquiry. Proper opportunity to participate in the proceedings shall be provided to the accused as well as the prosecution.

18. In case the trial Court is unable to reach to a logical conclusion based on the documents/certificates placed on record during the course of the inquiry, it may, as a last resort, get conducted the ossification test of the appellant keeping in view the observations made by this Court in the case of **Vinod Katara**(*supra*).

19. The inquiry shall be completed within 12 weeks from today.

20. A copy of this order shall forthwith be transmitted to the learned first Additional Sessions Judge, Darbhanga for information and compliance.

21. Upon conclusion of procedure, the inquiry report shall be forwarded to this Court and a copy shall also be provided to the accused and the prosecution.

22. The matter shall be listed for hearing in the third week of August, 2024.

Criminal Appeal No. 214 of 2018

23. List along with Criminal Appeal No. 177 of 2018

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

**New Delhi;
April 25, 2024**