Supreme Court of India
Jyoti Prakash Rai @ Jyoti Prakash vs State Of Bihar on 4 March, 2008
Author: S.B. Sinha
Bench: S.B. Sinha, V.S. Sirpurkar

CASE NO.:
Appeal (crl.) 440 of 2008

PETITIONER:
Jyoti Prakash Rai @ Jyoti Prakash

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 04/03/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO 440 OF 2008 [Arising out of SLP (Crl.) No. 4082 of 2007] S.B. SINHA, J :

1. Leave granted.

2. Appellant herein is said to be a delinquent juvenile. He was accused of commission of an offence under Section 302 of the Indian Penal Code for killing one of his school mates. He is said to have stabbed the deceased several times. The incident took place on 12.05.2000. His age was estimated at about 17 years as on the said date by the learned Magistrate before whom he was produced.

At that point of time, the Juvenile Justice Act, 1986 (for short "the 1986 Act") was in force. In terms of the provisions of the 1986 Act, "juvenile" meant a boy who had not attained the age of sixteen years. The Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the 2000 Act") came into force with effect from 1.04.2001. "Juvenile" has been defined in the 2000 Act to mean a person who has not completed eighteen years of age. Section 16 of the 2000 Act, as it stood then, provides for a non-obstante clause prohibiting imposition of sentence to death or life imprisonment or commitment to person in default of payment of fine or in default of furnishing security, on a delinquent juvenile.

3. Section 20 of the 2000 Act, as it stood then, reads as under:

"20. Special provision in respect of pending cases . Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had

been satisfied on inquiry under this Act that a juvenile has committed the offence."

4. For examining the claim of the appellant that he was a juvenile as on the date of commission of the offence, two medical boards were constituted. The first medical board which examined him on 24.04.2001, opined his age to be between 18 to 19 years. The second medical board which was constituted on 29.06.2001 also opined similarly.

5. Before the learned ACJM, Buxar, some documents were also produced. However, the same were not taken into consideration by the courts below.

6. By an order dated 21.04.2005, the learned Additional Sessions Judge [FTC], Buxar held:

" On 29.06.2001 the Medical Board was constituted under the Chairmanship of the Civil Surgeon, Buxar in which Jyoti Prakash was adjudged to be between 18 and 19 years. The board conducted ossification test and found the place of moustache to be black and also found the ancillary and Public Hair to be developed and on radiological findings the right wrist, right elbow and the chest appeared to be developed.

The medical board on 24.04.2001 has also adjudged the age of the accused Jyoti Prakash Rai to be between 18 and 19 years of age. The incident is dated 12.05.2000 and the medical board was constituted on 24.04.2001, which was after 11 months and 12 days from the date of occurrence. If by the date of occurrence and also the finding of the medical board of 19 years when 11 months and 12 days are subtracted then the age of the accused is more than 18 years. The New Act of 2000 and also the judgment of the Hon'ble Supreme Court would be applicable only in the condition when on 01.04.2001 the age of the petitioner has not crossed 18 years.

As per the findings of the medical board the petitioner on 01.04.2001 was around 18 years 10 months and 19 days old. The Counsel for the petitioner has prayed that the case be sent to the Special Court. In respect of this there is a clear direction of the Hon'ble Supreme Court that under Section 25 that if there is a clear direction of the court that a juvenile offender has committed a crime then only the child offender will be sent before the Board. In light of the above mentioned facts there is no occasion to abide by the directions of the Hon'ble Supreme Court, which is not applicable in the present case."

7. Before the High Court, it was inter alia rightly contended that the decision of this Court in Arnit Das v. State of Bihar [(2000) 5 SCC 488] which had laid down the law that the age of the juvenile should be determined as on the date of his production before the Court and not on the date of commission of offence has been overruled by a Constitution Bench of this Court in Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551]. In the impugned judgment, the High Court held: "7. According to the submission of learned Advocate of the petitioner, the first medical board was constituted on 24.4.2001 and on that date and board was of the opinion that the petitioner was aged between 18-19 years. He submitted that if the age of the petitioner is taken as 18 years on 24.4.2001 then on 1.4.2001, he was definitely below 18 years [i.e. 23 days less in 18 years]. Likewise, the second medical board was constituted on 29.6.2001 and on that date also the board assessed his age

as 18-19 years and, therefore, if the minimum age of the petitioner is taken as 18 years on 29.6.2001, the net result will be that the petitioner was less than 18 years on 1.4.2001 i.e. [two months twenty eight days less in attaining eighteen years].

8. I am of the view that this will not be the proper way of computing the age of petitioner and the proper way to assess the age of the petitioner will be that his age should be fixed in between 18- 19 years on the date of examination, according to which the age of the petitioner comes to 18 years 5 months 8 days on 1.4.2001 when he for the first time appeared before the medical board on 29.6.2001. Thus, the net result is that on 1.4.2001 the petitioner was definitely above 18 years of age and not below 18 years of age."

8. Mr. Nagendra Rai, learned senior counsel appearing on behalf of the appellant, would submit that the courts below committed a serious illegality insofar as they failed to take into consideration that on 12.05.2000, the age of the appellant having been determined to be 17 years, inevitably his age as on 1.04.2001 would be less than 18 years. It was furthermore submitted that Arnit Das (supra) being no longer a good law, the learned Trial Judge should have proceeded to determine the issue keeping in view the minimum age determined by the Medical Board. Reliance in this behalf has been placed on an unreported decision of this Court in Bihar State Electricity Board v. Bihar Power Workers Union & Ors [Civil Appeal No. 420 of 2001 decided on 6.03.2002] wherein it has been held:

"The High Court is of the view that age determined by the Medical Board cannot be accurate and, therefore, it finds that it would be appropriate to extend the benefit of the lesser age determined by the Medical Board. We do not think that that view of the High Court should be upset. The view of the appellant Board that it should be only average of the maximum and minimum age, cannot be quite accurate, if in fact, the employee is of the lesser age as determined by the Medical Board. In that view, the policy adopted by the appellant Board cannot be stated to be without any fault. In that view of the matter, the interference by the High Court is justified, in the circumstances of the case. The appeal is therefore dismissed."

9. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on records by the parties. In absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Indian Evidence Act, the same must be determined keeping in view the factual matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.

10. A medical report determining the age of a person has never been considered by the courts of law as also by the medical scientists to be conclusive in nature. After certain age it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests.

This Court in Vishnu v. State of Maharashtra [(2006) 1 SCC 283], opined:

"20. It is urged before us by Mr Lalit that the determination of the age of the prosecutrix by conducting ossification test is scientifically proved and, therefore, the opinion of the doctor that the girl was of 18-19 years of age should be accepted. We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact.

21..."

11. In the aforementioned situation, this Court in a number of judgments has held that the age determined by the doctors should be given flexibility of two years on either side.

In a case of this nature, thus, where the delinquent was examined by two different medical boards, who on two different dates have reached the identical opinion, viz, the age of the appellant between 18 and 19 years, and, thus, resulting in two different conclusions, a greater difficulty arises for the court to arrive at a correct decision. For the said purpose, the court may resort to some sort of hypothesis, as no premise is available on the basis whereof a definitive conclusion can be arrived at.

12. It is in the aforementioned situation, we are of the opinion that the test which may be applied herein would be to take the average of the age as opined by both the medical boards. Even applying that test, the age of the appellant as on 01.04.2001 would be above 18 years. We, however, hasten to add that we have taken recourse to the said method only for the purpose of this case and we do not intend to lay down any general proposition of law in this behalf As indicated hereinbefore, in so doing, we have also taken into consideration the fact that the appellant had filed documents in support of his claim that he was a juvenile but the same were found to be forged and fabricated which is itself a factor to show that he was making attempts to obtain a benefit to which he might not have been entitled to.

13. Applicability of the 2000 Act in relation to a juvenile who has committed an offence prior to coming into force of the 2000 Act came up for consideration before a Constitution Bench of this Court in Pratap Singh (supra). It was opined:

"31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence "notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record

such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile."

It was furthermore observed:

"36 . We, therefore, hold that the provisions of the 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1- 4-2001."

It was concluded:

"37. The net result is:

. .. ..

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1-4-2001."

14. Reliance placed by Mr. Rai on the unreported decision in Bihar State Electricity Board (supra) is misplaced. Therein a policy decision had been taken. The correctness of the said policy decision was in question having regard to the determination of the age by a medical board. The High Court was of the view that the age determined by the medical board cannot be accurate. It was, therefore, not a case where any law was laid down.

15. The court has to determine the age keeping in view a large number of factors. It is in that context it was opined in Birad Mal Singhvi v. Anand Purohit [1988 Supp SCC 604]:

"To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

16. In Sushil Kumar v. Rakesh Kumar [(2003) 8 SCC 673], this Court observed:

"32 . The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of ..."

17. In Ravinder Singh Gorkhi vs. State of U.P [(2006) 5 SCC 584], it was held :-

"21. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case."

It was furthermore held :-

"38. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

39. We are, therefore, of the opinion that until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and circumstances of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. In this case, the appellant had never been serious in projecting his plea that he on the date of commission of the offence was a minor. He made such statement for the first time while he was examined under Section 313 of the Code of Criminal Procedure.

40. The family background of the appellant is also a relevant fact. His father was a "Pradhan" of the village. He was found to be in possession of an unlicensed firearm. He was all along represented by a lawyer. The court estimated his age to be 18 years. He was tried jointly with the other accused. He had been treated alike with the other accused. On merit of the matter also the appellant stands on the same footing as the other accused. The prosecution has proved its case. In fact no such plea could be raised as the special leave petition of the persons similarly situated was dismissed when the Court issued notice having regard to the contention raised by him for the first time that he was a minor on the date of occurrence."

18. In Jitendra Ram v. State of Jharkhand [(2006) 9 SCC 428], this Court stated :

"20. We are, however, not oblivious of the decision of this Court in Bhola Bhagat v. State of Bihar wherein an obligation has been cast on the court that where such a plea is raised having regard to the beneficial nature of the socially oriented legislation, the same should be examined with great care. We are, however, of the opinion that the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records."

It was held :

"22. We, therefore, are of the opinion that the determination of the age of the appellant as on the date of the commission of the offence should be done afresh by the learned Sessions Judge."

19. Appellant herein had produced a large number of documents to prove his age purported to be as on the date of commission of the crime. The genuineness of the school certificate and the horoscope had been questioned. The school certificate produced by the appellant was found to be forged and fabricated and as a matter of fact a criminal case was directed to be instituted against the Head of the Institution.

20. The court, therefore, had no other option but to determine the age on the basis of the Medical Reports. Both the medical reports dated 24.04.2001 and 29.06.2001 opined the age of the appellant between 18 and 19 years. In terms of first medical report, the age of the appellant came to be 18 years 5 months 8 days and in terms of the second medical report, it came to be between 18 and 19 years. The High Court opined that the appellant on 1.04.2001 was definitely above 18 years of age and not below 18 years of age.

21. The courts have considered this aspect of the matter on earlier occasions also. If, thus, on the basis of several factors including the fact that school leaving certificate and the horoscope produced by the appellant were found to be forged and fabricated and having regard to two medical reports the courts below have found the age of the appellant as on 1.04.2001 to be above 18 years, we are of the opinion that no exception thereto can be taken.

22. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.