

RAM SURESH SINGH

V.

PRABHAT SINGH @ CHHOTU SINGH & ANR.

Criminal Appeal No. 909 of 2009

MAY 05, 2009

(S.B. SINHA AND CYRIAC JOSEPH, JJ.)

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2001:

r.22 – Determination of age – Held: Opinion of Medical Board is to be preferred only when the date of birth certificate from the school first attended is not available – On facts, entry in the school register having been proved, High Court rightly accepted the same and held the offender as a juvenile – Juvenile Justice (Care and Protection of Children) Act, 2000 – s.6 – Evidence Act, 1872 – s.35.

Respondent No.1 was accused of having committed an offence punishable u/s 302 IPC. He raised a plea that he was a juvenile. He produced entries in the school admission register. However, the Magistrate concerned appointed a Medical Board and on the basis of its report held that respondent no.1 was aged more than 20 years on the date of occurrence. On revision, the High Court relying upon the evidence regarding entries in the school register held the offender as a juvenile. Aggrieved, the complainant filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1 Rule 22 of the Juvenile Justice (Care and Protection of Children) Rules, 2001 provides for the procedure to be followed in respect of determination of the age of a person. It indicates that the opinion of the Medical Board is to be preferred only when a date of birth certificate from the school first attended is not available. Even if the medical report is to be considered, it is now

- A well known that an error of two years in determining the age is possible. However, the medical opinion rendered in the instant case corroborates the entry made in the register. Admission register of the school having been proved in accordance with law, there is no reason as to why the same should not be taken into consideration. [Para 14, 17-18] [459-D,G ; 460-G-H]

- 1.2 An entry in a school register may not be a public document and, thus, must be proved in accordance with law but, in the instant case, the said entry has been proved. The documents produced by respondent no.1 were not found to be forged, fabricated or otherwise inadmissible in law. If a document is proved to be genuine and satisfies the requirements of law, it should be, subject to just exceptions, relied upon. [Para 16 and 19] [459-F; 461-C]

- Birad Mal Singhvi v. Anand Purohit* 1988 (Supp.) SCC 604; *Raja Janaki Nath Roy v. Jyotish Chandra Acharya Chowdhury* AIR 1941 Cal. 41; *Vimal Chadha v. Vikas Choudhary & Anr.* 2008 (8) SCALE 608; *Pratap Singh v. State of Jharkhand & Anr.*(2005) 3 SCC 551 – referred to

- 2.1 The condition laid down in s. 35 of the Evidence Act for proving an entry pertaining to the age of a student in a school admission register is to be considered for the purpose of determining the relevance thereof. But in the instant case, the said condition must be held to have been satisfied. There cannot furthermore be any doubt whatsoever that same standard is required to be applied for the purpose of s.35 of the Evidence Act both in civil as also criminal proceedings. [Para 15 and 18] [459-E; 460-B]

- Ravinder Singh Gorkhi v. State of U.P.* (2006) 5 SCC 585 and *Jaya Mala v. Home Secretary, Government of Jammu and Kashmir & Ors.* AIR 1982 SC 1297 = (1982) 2 SCC 202-
relied on

Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar 2008 A
(3) SCALE 348 - referred to

3. As the date of birth entered in the school register has been proved, there is no reason as to why the same should not be given effect to. There is no infirmity in the order passed by the High Court. [Para 22 and 23] [462-D] B

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 909 of 2009

From the Judgement and Order dated 17.05.2006 of the Hon'ble High Court of Judicature at Patna in Criminal Revision No. 752 of 2005 C

Praneet Ranjan, Ajay Amritraj, for the Appellant.

Sishir Pinaki, Kumar Ranjan, Alok Kumar, Manish Kumar, Gopal Singh, for the Respondent. D

The Judgement of the Court was delivered by

S.B. SINHA, J.

1. Leave granted. E

2. Respondent no.1 is facing trial in Nava Nagar P.S. Case No.102 of 2003 on the charge of committing murder of one Tribhuvan Singh. Appellant before us is the uncle of the deceased.

3. Before the learned trial Judge, a plea was raised by him that he was a juvenile. In support of the said plea, entries in the admission register/certificate in the Government Secondary School, Navanagar, Buxar, in which he took admission on 22nd January 1996 and studied up to 31st December 1999, were produced. The said certificate was issued on 23rd February 2000, the relevant portion whereof reads as under : F
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"1. Name of Student : Prabhat Ranjan

2. Father's/Guardian's Name : Shri Rajkishor Singh H

- A 3. Permanent Address : Vill-Amir Pur, Post
Navanagar Distt-
Buxar (Bihar)
- B 4. Date of first admission
in the school : 22.01.1996
- XXX XXX XXX
- C 7. Date of Birth in
Admission Register
(in number and : 10.02.1987
Words) : Tenth February
Eighty Seven
8. Date of Leaving the School : 31.12.1999
- D 9. At the time of leaving
School studying in which
Class : 8th"

4. The said admission register/certificate, thus, shows that the date of birth of the accused is 10.02.1987.

- E 5. A xerox copy of another certificate dated 12.11.2003 was also brought on record which was issued by the Principal, Ram Lakhan Singh Yadav High School. The said certificate also shows the date of birth of the first respondent to be 10.02.1987. It was proved by a teacher of the said school, Shri Raj Kumar
- F who examined himself as PW -2 as also by the father of the accused, namely, Raj Kishore Singh.

- G 6. The learned Magistrate, however, appointed a Medical Board. The Medical Board, in its report dated 10th February 2005, inter alia, upon taking ossification test, estimated his age to be within 20 to 22 years.

- H By an order dated 03rd August 2005, the Principal Magistrate, Juvenile Justice Board, Patna held that on the date of occurrence, i.e., 10th September 2003, the age of the respondent no.1 was more than 20 years stating :

"Considering the evidence on record, there is only evidence which is the Report of the Medical Board. The statement of the father of the accused and the teacher of the school supported with the certificate which are not conclusive and sufficient under rules of Juvenile Justice (Care & Protection) Rules, 2001. Accordingly, on the basis of the report of the Medical Board and on physical appearance of the accused and conclusion arrived at that this accused is not Juvenile at this stage nor at the time of alleged commission of offence. Accordingly, this case record is remitted back to the court concerned for disposal in accordance with law."

7. Respondent no.1 filed a revision application thereagainst before the High Court of Patna which, by reason of the impugned order dated 17th May 2006, was allowed by a learned Single Judge, holding :

"Considering the submission made by the parties and the decision relied on by them, find that the evidence which was produced by the petitioner before the Juvenile Justice Court were sufficient for determination of his age. The certificate granted by the Headmaster by Ram Lakhan Singh High School stating the date of birth of the petitioner as 10.02.1987 was issued on 23.02.2000 and the date of occurrence is 10.09.2003, much after issuance of certificate by the headmaster of Ram Lakhan Singh High School where the date of birth of the petitioner has been mentioned as 10.02.1987. In support of the age, the admission register of the school was also produced wherein the petitioner's name has been mentioned in Sl.No.134. There also the date of birth of the petitioner has been mentioned as 10.02.1987 and the date of issuance of school leaving certificate is mentioned as 23.02.2000. There is no reason for doubting or suspecting the genuineness of these two documents. In the impugned order also no reason has been assigned for disbelieving the transfer certificate and the photo copy of the certificate

A issued from Ram Lakhan Singh Yadav High School, Nava
Nagar. Rule 22(5) of the Juvenile Justice (Care and
Protection of Children) Act, 2000, order of priority has
B been given to the certificate of birth issued by the school
in preference to the opinion of the duly constituted medical
board. Only in case of some dispute regarding
C genuineness of these documents, the Juvenile Justice
Board can seek opinion of duly constituted medical board
D for ascertaining the age of an accused for declaring him
Juvenile.

C Considering the fact that there is nothing on record to
disbelieve these documents the evidence of the father as
well as teacher, the Juvenile Justice Board should have
D decided in favour of the petitioner and declared him
Juvenile. The Apex Court also in similar matters have
decided that the liberal view should be taken by Juvenile
Justice Board as well as courts while ascertaining the
E age of accused for the purpose of declaring him Juvenile.
Relying upon the certificate produced before the Juvenile
Justice Board and the evidence of father and teacher,
F certainly the petitioner was a Juvenile on the date of
occurrence.

Accordingly the order dated 03.08.2005 passed by the
Juvenile Justice Board Patna City in J.J.B.o.492 of 2005
is set aside and this application is allowed.”

F 8. Mr. Praneet Ranjan, learned counsel appearing on behalf
of the appellant would contend :

(i) Having regard to the provisions of Section 35 of the
Indian Evidence Act, 1872 the High Court committed
G a serious error in relying upon the entries made in
the School register in preference to the opinion of
the Medical Board.

(ii) An entry in regard to date of birth of a student recorded
in admission register, being not a public document,
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must be proved to have been recorded at the instance of a person who was the guardian of the student. A

Strong reliance was placed on a decision of this Court in case of *Birad Mal Singhvi v. Anand Purohit* [1988 (Supp.) SCC 604] and a decision of the Calcutta High Court in the case of *Raja Janaki Nath Roy v. Jyotish Chandra Acharya Chowdhury* [AIR 1941 Cal. 41]. B

- (iii) As the age of a person required to be determined by a person having regard to the provisions contained in Section 35 of the Evidence Act both in civil as also in criminal proceeding involve the same legal principle, the High Court failed to consider the depositions of the witnesses examined in the enquiry, namely, Raj Kumar and Raj Kishore Singh, in their proper perspective. C D

9. Mr. Shishir Pinaki, learned counsel appearing on behalf of respondent no.1, on the other hand, urged :

- (a) as the admission register of the school in respect of the respondent no.1 showing his date of birth has been proved, the impugned order is unassailable. E
- (b) It was, however, submitted that in the event the medical report is taken into consideration [which otherwise may not be necessary in view of Rule 22(5) of the Juvenile Justice (Care & Protection of Children) Rules, 2001], the respondent's age would be 18 years having regard to the fact that an error of two years or either side is possible. F G
- (c) Bihar Education Code having a statutory status, as Article 242 whereof provides for maintenance of a school register, presumption of correctness in respect thereof should be raised. H

A 10. Determination of age of a person sometimes poses a difficult question. In the absence of any statutory rule having been framed, no doubt, the provisions of Section 35 of the Evidence Act were required to be strictly complied with.

B Section 6 of the Juvenile Justice (Care & Protection of Children) Act, 2000 deals with the power of the Juvenile Justice Board which is extracted below :

C **"6. Powers of Juvenile Justice Board.-(1)** Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

D (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise."

E 11. Respondent no.1 claims himself to be a juvenile. An enquiry was directed to be conducted. In the said enquiry, evidently, the original register maintained by the Government Secondary School, Nava Nagar was produced. Date of birth of the said respondent was stated to be 10.02.1987. Before us, a contention was raised as to whether column no.5 thereof was filled up or not. An affidavit was filed to show that column no.5 is statement on the declaration of the father. We would, therefore, proceed on the said basis.

G 12. Respondent no.1 was admitted in the Govt. Secondary School, Nava Nagar on 22nd January 1996. He left the school on 31st December 1999. Certificate was issued on 23rd February 2000 so as to enable him to take admission in another school, namely, Ram Lakhan Singh Yadav High School. We may not consider the certificate granted by the Principal of the latter school as only a xerox copy thereof was filed inasmuch as the

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original having been not produced, the same was inadmissible in evidence. A

13. Before the courts below, Shri Raj Kumar, a teacher of Ram Lakhan Singh Yadav School examined himself. Although he was not present when the respondent no.1 was admitted in the school, but he proved the contents of the admission register. It is, therefore, not correct to contend that the contents of the admission register were not proved. Raj Kishore Singh, father of the respondent no.1 also examined himself. He also proved the date of birth of the respondent no.1. B

14. In terms of the provisions of Section 68 of the Juvenile Justice (Care & Protection of Children) Act, 2000, the Central Government has framed Juvenile Justice (Care & Protection of Children) Rules, 2001. Rule 22 of the said Rules provides for the procedure to be followed in respect of determination of the age of a person. It indicates that the opinion of the Medical Board is to be preferred only when a date of birth certificate from the school first attended is not available. C

15. The condition laid down in Section 35 of the Evidence Act for proving an entry pertaining to the age of a student in a school admission register is to be considered for the purpose of determining the relevance thereof. But in this case, the said condition must be held to have been satisfied. D

16. An entry in a school register may not be a public document and, thus, must be proved in accordance with law, as has been held by this Court in the case of *Birad Mal Singhvi* (supra), but, in this case the said entry has been proved. E

17. Even if we had to consider the medical report, it is now well known that an error of two years in determining the age is possible. F

In the case of *Jaya Mala v. Home Secretary, Government of Jammu and Kashmir & Ors.* [AIR 1982 SC 1297 = (1982) 2 SCC 202], this Court held : G

A "However, it is notorious and one can take judicial notice
that the margin of error in age ascertained by radiological
examination is two years on either side."

B 18. There cannot furthermore be any doubt whatsoever
that same standard is required to be applied for the purpose of
Section 35 of the Evidence Act both in civil as also criminal
proceedings, as was held by this Court in the case of *Ravinder
Singh Gorkhi v. State of U.P.* (2006) 5 SCC 584, stating :

C "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 ceiling laws; and even for the purpose
of litigating before a civil forum e.g. necessity of being
D 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
E 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
F 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."

G However, the medical opinion rendered in this case
corroborates the entry made in the register. Admission register
of the school having been proved in accordance with law, we
do not see any reason as to why the same should not be taken
H into consideration.

19. We are not oblivious of the fact that it is difficult to lay A
down a law as to whether in a case of this nature, the lower or
the upper age or the average age should be taken into
consideration. Each case depends on its own facts. In the case
of *Jyoti Prakash Rai @ Jyoti Prakash v. State of Bihar* 2008(3)
SCALE 348 this Court, upon consideration of large number of B
decisions, opined :

“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. C
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 D
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 E
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 F
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 G
be above 18 years, we are of the opinion that no exception
thereto can be taken.”

In this case, however, the documents produced by the
respondent no.1 were not found to be forged, fabricated or
otherwise inadmissible in law. If a document is proved to be H

A genuine and satisfies the requirements of law, it should be, subject to just exceptions, relied upon.

20. However, in the case of *Vimal Chadha v. Vikas Choudhary & Anr.* 2008(8) SCALE 608, this Court remitted the matter back for consideration of the age in terms of the rules keeping in view of the provisions contained in Section 472 of the Code of Criminal Procedure.

21. Mr. Praneet Ranjan, learned counsel appearing for the appellant has relied upon certain observations made by one of us in the case of *Pratap Singh v. State of Jharkhand & Anr.* (2005) 3 SCC 551 to contend that model rules have no application, but as the statutory rules have come into force in the procedure laid down therein should be followed.

22. As in this case, the date of birth entered into the school register has been proved, we are of the opinion that there is no reason as to why the same should not be given effect to.

23. We, therefore, find no legal infirmity in the order passed by the High Court. This appeal is dismissed.

R.P.

Appeal dismissed.