

2009 Vol. 111 (9) Bom. L.R. 4071*

IN THE HIGH COURT OF BOMBAY
[AURANGABAD BENCH]

g

Abdul Riyaz S/o Abdul Bashid Kazi
v.
State of Maharashtra

CRIMINAL WRIT PETITION NO. 319 OF 2009
DECIDED ON: 24.09.2009

h

Judges

Naresh H. Patil and Shrihari P. Davare, JJ.

Criminal — Date of commission of offence — Juvenile in conflict with law — Sections 34 and 302 of the Indian Penal Code, 1860 — Sections 2

i

* MANU/MH/1085/2009

and 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 — Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 — Sections 2 and 7-A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 — Petitioner convicted under Section 302 read with Section 34 of IPC along with father and brothers sentenced to suffer R.I. for life by Additional Sessions Judge — Appeal by Petitioner in High Court as well as Supreme Court dismissed — Petition by petitioner claiming juvenility contending himself as juvenile in conflict with law under Aection 7-A read with Aection 2(l) of Act of 2000 on date of commission of offence — Petitioner produced his school leaving certificate to substantiate his date of birth — Whether Petitioner was juvenile in conflict with law on date of commission of offence — Held, school leaving certificate issued by school dated much prior to date of commission of offence — Date of birth of Petitioner supported by school leaving certificates, bona fide certificate and admission register in consonance with Rule 12(3) (a)(ii) of Rules of 2007 making him juvenile in conflict with law on date of commission of offence under Aection 7-A read with Aection 2(l) of Amendment Act of 2006 — Sentence of life imprisonment imposed by the Additional Sessions Judge quashed and set aside — Petition allowed

Facts

The Petitioner was convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 along with his father and three elder brothers. He was sentenced to suffer rigorous imprisonment for life by the Additional Sessions Judge. An appeal by the Petitioner in the High Court as well as an SLP before the Supreme Court was dismissed. Petitioner filed a petition claiming juvenility and contending himself as a juvenile in conflict with law under Section 7-A read with Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of commission of the offence. Hence, the present petition.

Held

[1] A note is required to be taken that the said school leaving certificate issued by Jamhoor Urdu Primary School, Udgir, is dated 12th June, 1995 i.e. much prior to the date of commission of the offence i.e. on 12th August, 2003. Moreover, the Respondent also produced page No. 106 of admission register of Jamhoor Urdu Primary School, Udgir, which discloses that the admission of the Petitioner is at Sr. No. 2606 and the Petitioner was admitted in the said school on 19.6.1991 and he left the said school after passing 4th standard on 12th June, 1995 and the date of birth of the Petitioner recorded therein, is 15th June, 1986. Thus, it is amply clear that the Petitioner's date of birth is 15th June, 1986 as claimed by the Petitioner and supported by the afore said school leaving certificates, bona fide certificate and admission register, which are in consonance with the above referred Rule 12 of the Rules of 2007, and more particularly Rule 12(3) (a)(ii) thereof.

[p. 4077, para 12 e]

[2] The Petitioner was the juvenile in conflict with law on the date of commission of the offence.

[p. 4078, para 13 a]

- [3] In view of the facts of the case and material placed before us, we are convinced that the Petitioner is, the juvenile in conflict with law and was the juvenile in view of the provisions of Section 7-A read with Section 2(l) of the Juvenile Justice (Care and Protection of Children) Amendment Act of 2006 on the date of commission of the offence i.e. 12th August, 2003. Hence, the petition is required to be allowed and the Petitioner is required to be released forthwith in view of the provisions of Section 6(2) and also in view of Section 15 of the the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, since the Petitioner has already undergone the sentence of more than three years. [p. 4078, para 15 c]

Legislations referred to

- Indian Penal Code, 1860, Section 34 and 302** [p. 4073, para 3 i]
Juvenile Justice (Care and Protection of Children) Act, 2000
Section 2(l) [p. 4074, para 5 e]
Section 6 [p. 4076, para 8 e]
Section 6(2) [p. 4078, para 15 d]
Section 64 [p. 4076, para 7 c]
Section 7A [p. 4074, para 5 e]
Section 15 [p. 4078, para 15 d]
Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 [p. 4074, para 5 d]
- Subsidiary Legislation referred to**
 Juvenile Justice (Care and Protection of Children) Rules, 2007
 Rule 12 [p. 4075, para 7 c]
 Rule 12(3) [p. 4075, para 7 e]
 Rule 12(3)(a)(ii) [p. 4075, para 7 g]
 Rule 19 [p. 4075, para 7 d]

Counsel

For Appellant/Petitioner/Plaintiff: D.S. Manorkar, Adv.
 For Respondents/Defendant: B.J. Sonwane, A.P.P.

Ratio Decidendi

- “School leaving certificate issued by school dated much prior to date of commission of offence is a valid proof to determine whether a juvenile is conflict with law on date of commission of offence.”***

JUDGMENT

- Shrihari P. Davare, J.**

1. Perused.

2. Rule. Rule made returnable forthwith and by consent of the learned respective Counsel for the parties, taken up for final hearing.

3. The Petitioner, namely Abdul Riyaz s/o Abdul Bashid Kazi, who has been convicted under Section 302 read with Section 34 of the Indian Penal Code

along with his father and thred elder brothers, was sentenced to suffer R.I. for life and fine by the Judgment and Order rendered by the Additional Sessions Judge, Udgir in Sessions Case No. 52 of 2003 on 10th June, 2004. The Petitioner challenged the said Judgment and Order in Appeal No. 489 of 2004 before this Court and this Court confirmed the said Judgment and Order of the conviction and sentence awarded by the Additional Sessions Judge, Udgir on 2nd February, 2006. Thereafter, the Petitioner preferred special leave Petition No. 1531 of 2007 before Hon'able Supreme Court along with application for delay condonation. The Honorable Supreme Court allowed the said application for condonation of delay, but rejected the special leave petition by its Order, dated, 9th February, 2007. Accordingly, the conviction and sentence of life imprisonment inflicted upon the Petitioner herein was confirmed up to the Honorable Supreme Court.

4. By the present petition, the Petitioner has raised the contention that his death of birth is 15th June, 1986 and hence, on the date of commission of offence, i.e. 12th August, 2003 his age was 17 years 1 month and 27 days. To substantiate the date of birth, the Petitioner produced his school leaving certificate disclosing his aforesaid date of birth therein.

5. Basing upon the afore said date of birth and also basing upon the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 and more particularly in accordance with Section 7A thereof, the Petitioner claims juvenility and contends that he was juvenile in conflict with law in view of the provisions of Section 7A read with Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of commission of offence, i.e. 12th August, 2003. Accordingly, the Petitioner prays that benefit of the said provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 be given to the Petitioner and he be released from the jail forthwith.

6. The learned Counsel for the Petitioner placed reliance on the provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter, referred to as, the Act of 2000) as amended in 2006 with effect from 22nd August, 2006, whereby provisions of Section 7A were introduced by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006). Section 7A of the Act of 2000 reads as under:

7A. Procedure to be followed when claim of juvenility is raised before any Court:

(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final

- a disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there, under, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
- b (2) If the Court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate Order, and the sentence, if any, passed by a Court shall be deemed to have no effect.
- c 7. Reliance was also placed on the provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter, referred to as, the Rules of 2007 for short). Rule 12 of the Rules of 2007 reads as under:
- d 12. Procedure to be followed in determination of age:
- e (1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of 30 days from the date of making of the application for that purpose.
- f (2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.
- g (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:
- h (a) (i) the matriculation or equivalent certificates, if available and in the absence whereof;
- i (ii) the date 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.

a

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in Sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an Order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the Order shall be given to such juvenile or the person concerned.

b

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7A, Section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in Sub-rule (3) of this rule.

c

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in Sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate Order in the interest of the juvenile in conflict with law.

d

8. We find it necessary here itself to refer to Section 6 of the Act of 2000, which refers to powers of Juvenile Justice Board and Section 6 reads as under:

e

6. Powers of Juvenile Justice Board:

(1) Where a Board has been constituted for any district, 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.

f

(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.

g

9. The above referred Section 7A of the Act of 2000 contemplates that wherever claim of juvenility is raised before any Court, the Court shall make an inquiry so as to determine the age of such person and hence, by our Order dated, 5th August, 2009, directions were issued by us to the concerned officers to take steps to produce original record concerning the date of birth of the Petitioner, like original birth certificate, original school leaving certificate from Jamhoor Urdu Primary School, Udgir, District Latur. It was also directed that the police inspector shall also take steps to secure any original register maintained by the School showing date of birth of the Petitioner. It was further directed that steps be taken to secure original record of the Petitioner's Higher Secondary studies in Jamhoor Secondary & Higher Secondary School (Jr. College), Udgir, District Latur for securing original record mainly reflecting date of birth of the Petitioner.

h

i

- a 10. Accordingly, Dhondiram Shetiba Gaikwad, P.S.I. Udgir Rural Police Station, Udgir, District Latur filed affidavit in reply and stated that at the time of commission of the offence, i.e. 12th August, 2003, the Petitioner was juvenile and his date of birth is 15th June, 1986. It is also submitted by the Respondent that the Petitioner was below age of 18 years on the date of commission of the offence. He further submitted that as per the directions of this Court, he received the school leaving certificate of the
- b Petitioner from Jamhoor Primary School, Udgir, District Latur, which reveals that the date of birth of the Petitioner is 15th June, 1986. He also stated that he collected bona fide certificate from the said school, wherein the Petitioner's date of birth is shown as 15th June, 1986. The Respondent has annexed both the said certificates along with the reply at Annexure R-I collectively.
- c 11. The Petitioner has placed reliance on the school leaving certificate dated, 9th February, 2009, issued by Jamhoor Secondary and Higher Secondary School and we have perused the same. The said certificate discloses the date of birth of the Petitioner as 15th June, 1986. We have also perused the school leaving certificate dated, 12th June, 1995, issued by
- d Jamhoor Urdu Primary School, Udgir, District Latur, and bona fide certificate dated, 4th July, 2009 issued by Jamhoor High School, Udgir, produced by the Respondent as per our afore said directions at Annexure R-I collectively and the said certificates also disclose the date of birth of the Petitioner as 15th June, 1986.
- e 12. A note is required to be taken that the said school leaving certificate issued by Jamhoor Urdu Primary School, Udgir, is dated, 12th June, 1995, i.e. much prior to the date of commission of the offence, i.e. on 12th August, 2003. Moreover, the Respondent also produced page No. 106 of admission register of Jamhoor Urdu Primary School, Udgir, which discloses that the admission of the Petitioner is at Sr. No. 2606 and the Petitioner
- f was admitted in the said school on 19th June, 1991 and he left the said school after passing 4th standard on 12th June, 1995 and the date of birth of the Petitioner recorded therein, is 15th June, 1986. Thus, it is amply clear that the Petitioner's date of birth is 15th June, 1986 as claimed by the Petitioner and supported by the afore said school leaving certificates, bona fide certificate and admission register, which are in consonance with the
- g above referred Rule 12 of the Rules of 2007, and more particularly Rule 12(3)(a)(ii) thereof.
- h 13. Since, the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, more particularly Section 7A thereof and Section 2(l), i.e. the juvenile in conflict with law is beneficial to the convict, we issued directions to the Medical Officer, Government Hospital, Aurangabad on 25th August, 2009, to conduct the ossification test, to determine the present age of the Petitioner, on the Petitioner/convict by way of abundant precaution. Accordingly, the Lecturer in Radiology, Medical College, Aurangabad submitted the Radiological (Bone) Assessment report through the learned Additional Public Prosecutor before us on 8th September, 2009.
- i On perusal of the said report, it is seen that the present approximate age of the Petitioner convict is given as 20 years. Even after giving latitude of two years plus/minus and considering the present age of the Petitioner

on the higher side, i.e. 22 years, it is apparently clear that the Petitioners age on the date of commission of the offence, i.e. on 12th August, 2003 would be 16 years and, therefore, it is amply clear that the Petitioner was the juvenile in conflict with law on the date of commission of the offence.

14. As mentioned Hereinabove, even basing upon the school leaving certificate produced by the Petitioner and also the school leaving certificate, bona fide certificate and the school admission register produced by the Respondent, the date of birth of the Petitioner is disclosed therein, as 15th June, 1986 and considering the date of the commission of the offence, i.e. 12th August, 2003, it is crystal clear that the age of the Petitioner was of 17 years 1 month and 27 days, i.e. below 18 years on the said date and he was juvenile in conflict with law on the date of commission of the offence.

15. In view of the facts of the case and material placed before us, we are convinced that the Petitioner is, the juvenile in conflict with law and was the juvenile in view of the provisions of Section 7A read with Section 2(l) of the Juvenile Justice (Care and Protection of Children) Amendment Act of 2006 on the date of commission of the offence, i.e. 12th August, 2003. Hence, the petition is required to be allowed and the Petitioner is required to be released forthwith in view of the provisions of Section 6(2) and also in view of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, since the Petitioner has already undergone the sentence of more than three years.

16. In the result, the petition is allowed. We hold that the Petitioner is the juvenile in conflict with law on the date of commission of the offence, i.e. on 12th August, 2003. We confirm the conviction imposed upon the Petitioner by the Trial Court and subsequently confirmed by this Court in appeal. We also quash and set aside the sentence of life imprisonment imposed by the Additional Sessions Judge, Udgir in Sessions Case No. 52 of 2003 on 10th June, 2004. The Petitioner shall be set at liberty forthwith, in case the Petitioners custody is not required in any other case. Rule is made absolute in above terms.