

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. (S) 1296 OF 2017
[Arising out of Special Leave Petition
(Criminal) No.1173 OF 2015]

LOK NATH PANDEY . . . APPELLANT (S)

VERSUS

THE STATE OF UTTAR PRADESH
& ANR. . . . RESPONDENT (S)

O R D E R

1. Leave granted.
2. The respondent No.2 who is represented by a learned counsel appointed by the Supreme Court Legal Services Committee is charged for an offence under Section 302 IPC allegedly committed as far back as on 8.04.2010. The question that has arisen and which has delayed the trial

is whether the respondent No.2 is a juvenile and, therefore, entitled to be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "J.J. Act"). The learned Magistrate in seisin of the question was of the view that the respondent No.2 is not a juvenile which view has been reversed in appeal by the learned Additional Sessions Judge. The same has been affirmed by the High Court. The father of the deceased is the appellant before us.

3. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "J.J. Rules") lays down the procedure for determination of age of a juvenile. The said Rule 12 is in the following terms:

"12. Procedure to be followed in determination of Age.

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or 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 thirty days from the date of making of the application for that purpose.

(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 appearance or documents, if available, and send him to the observation home or in jail.

(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 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.

(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.

(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.

(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."

4. A reading of the Rule 12 of the J.J. Rules would clearly indicate that the primary document on which determination of age is required to be made is the matriculation certificate or equivalent certificates. It is only if such certificates are not available recourse can be had to the other documents mentioned in Rule 12 of the J.J. Rules. It will, therefore, be necessary for the Court to take a brief note of the facts relating to the schools/institutions attended by the respondent No.2 and the certificates issued by the said institutions/schools with regard to his date of birth.

5. There is no dispute on the fact that initially the respondent No.2 was a

student of Amar Singh Children's School, Gorakhpur, U.P. under the Central Board of Secondary Education (hereinafter referred to as "CBSE") from Class 3 to Class 8. He had studied in the said school upto the year 2003. His date of birth as recorded in the School register is 7th October, 1990. From the said school the respondent No.2 migrated to another school run by the CBSE i.e. Central Academy Senior Secondary School where he studied in Class 9 during the year 2003-2004 and in Class 10 during the year 2004-2005. He failed in Class 10. His date of birth in the said school (Central Academy Senior Secondary School) register is 7th October, 1990.

6. It appears that after his failure in Class 10 examination which is the matriculation examination, the respondent No.2 migrated and joined the Paniyara Inter College, Maharajganj, U.P. and studied

there again in Class 9 during the year 2005-2006 and Class 10 during the year 2006-2007. He appeared and passed the matriculation examination/Class 10 examination in the year 2007. His date of birth as recorded in the Paniyara Inter College, Maharajganj, U.P. register is 10th August, 1993.

7. The question that confronts the Court is which of the two dates of birth is authentic. If 7th October, 1990 is to be accepted by the Court as the date of birth of the respondent No.2 he would not be a juvenile. However, if the other date i.e. 10th August, 1993 is to be acknowledged, the respondent No.2 would be a minor. The occurrence, as already noticed, took place on 8th April, 2010.

8. What we have before us is a situation where the person who claims to be

a juvenile has two matriculation certificates. We have perused the documents in original which were required to be placed before the Court by the Board of High School and Intermediate Education, U.P. and the Central Board of Secondary Education in terms of the order of this Court dated 11th July, 2017.

9. We would not be wrong to proceed on the basis that the entries of date of birth in the school register(s) are made on the basis of the declaration to the said effect by the parents/guardian of the child at the time of entry of the child in the school. The earliest declaration in this regard is in the Amar Singh Children School as well as the Central Academy Senior Secondary School in whose registers the date of birth of the respondent No.2 is recorded as 7th October, 1990. A perusal of the documents in original produced by the Central Board

of Secondary Education pursuant to the order of this Court would indicate the existence of a certificate duly signed by the Principal of the said institutions that the particulars in the register including the date of birth of all the students had been brought to the notice of the parents/guardian of such students. The respondent No.2 appeared in Class 10 examination i.e. matriculation examination from the Central Academy Senior Secondary School in the year 2005 and the date of birth certified by the CBSE is 7th October, 1990. After the respondent No.2 failed in Class 10 examination in the year 2005 he migrated to Paniyara Inter College, Maharajganj, U.P. in the year 2005-2006 and there again on the basis of his own declaration his date of birth is recorded as 10th August, 1993. When the respondent No.2 or his parents/guardian acting on his

behalf had declared his date of birth initially as 7th October, 1990 which is recorded in the first matriculation certificate we do not see how there can be a reasonable basis for a subsequent date i.e. 10th August, 1993 to be entered in the school record of Paniyara Inter College, Maharajganj, U.P. to which school the respondent No.2 had migrated in the year 2005-2006 after his failure in Class 10 examination of the CBSE. We are, therefore, of the view that it is the first declaration of date of birth, which is contained in the matriculation certificate issued to the respondent No. 2 by the CBSE i.e. 7th October, 1990 which should hold the field, a fact fortified by the own conduct of the said respondent No.2 in making a declaration to obtain a PAN card stating that his date of birth is 12th March, 1985. On the basis of the aforesaid PAN card, the

respondent No.2 had, in fact, opened a bank account in the HDFC Bank at Gorakhpur, Uttar Pradesh. The said matriculation certificate coupled with the aforesaid ancillary facts lead the Court to conclude that the correct date of birth determined in accordance with the certificate contemplated under Rule 12 of the J.J. Rules so far as the respondent No.2 is concerned is 7th October, 1990. He, therefore, was not a juvenile on the date of occurrence of the incident i.e. 8th April, 2010. Consequently, the respondent No.2 is not entitled to the benefit of the provisions of the J.J. Act and is liable to be tried for the offence under Section 302 IPC in accordance with the provisions of the Code of Criminal Procedure, 1973. The accused - respondent No.2 who has been released by the Juvenile Board will surrender before the learned trial Court

within four weeks from today whereafter he will be tried in accordance with law. The trial be completed at the earliest.

10. Consequently and in the light of the above the order of the High Court is set aside and the appeal is allowed in the above terms.

.....,J.
(RANJAN GOGOI)

.....,J.
(L. NAGESWARA RAO)

.....,J.
(NAVIN SINHA)

NEW DELHI
AUGUST 01, 2017

ITEM NO.9

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 1173/2015
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 25-09-2014
IN CRLA NO. 3456/2011 PASSED BY THE HIGH COURT OF JUDICATURE AT
ALLAHABAD)

LOK NATH PANDEY

PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

Date : 01-08-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Mr. Nagendra Rai, Sr. Adv.
Mr. Raahul Trivedi, Adv.
Mr. Manu Mishra, Adv.
Mr. T. Mahipal, Adv.
For Mr. Sanjay Kumar Tyagi, AOR

For Respondent(s)

Ms. Nidhi, AOR

Mr. P.N. Misra, Sr. Adv.
Ms. Alka Sinha, Adv.
For Mr. Anuvrat Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]