

SIKANDER MAHTO

v.

TUNNA @ TUNNU MIAN @ TUNNA MIAN @ MOBIN
ANSARI & ANR.

(Criminal Appeal No. 511 of 2014)

FEBRUARY 27, 2014

[P. SATHASIVAM, CJI, AND RANJAN GOGOI, J.]

JUVENILE JUSTICE CARE AND PROTECTION OF
CHILDREN ACT, 2000:

Claim of juvenility - Offences punishable u/ss 376 and 302/201 IPC - Trial court holding the accused not a juvenile and the school certificate produced by him, as forged - High Court on the basis of medical report holding him as juvenile - Held: The evidence i.e. the record of the two schools produced by complainant and Principals of two schools before Supreme Court, established that accused was not a juvenile on the date of occurrence - Order of High Court set aside and that of trial court restored - Penal Code, 1860 - s. 376 and 302/201 - Evidence - Evidence led before Supreme Court in appeal.

The respondent was prosecuted for commission of offences punishable u/s 376 and 302/201 IPC. He produced before the trial court a certificate issued by Government Primary Urdu School showing him a juvenile on the date of occurrence. The trial court held the certificate as a forged one and sent the respondent for medical examination. The medical report indicated the accused to be of 17 years of age on the date of occurrence. The trial court did not accept the claim of accused for juvenility. However, the High Court declared him to be a juvenile on the date of occurrence.

A In the instant appeal, the complainant produced two certificates, one by the Government Primary Urdu School, showing that the accused was never admitted in that school, and another of a different Government Primary School showing the admission of the accused in the school and his date of birth according to which the
 B accused was of 21 years of age on the date of occurrence. The Court summoned Principals of both the Schools. They proved the two certificates respectively.

C Allowing the appeal, the Court

HELD:

D The relevant records placed before this Court by the Principals of the two schools pursuant to the order dated 27.01.2014, indicate that the claim of the first respondent to be a juvenile remains unsubstantiated and, in fact, the records of the school where he was enrolled would indicate that his date of birth is 28.11.1985. Properly
 E calculated with reference to the date of the alleged crime, the first respondent was aged about 21 years on the relevant date and therefore he was not a juvenile. Therefore, the order passed by the High Court is set aside and that passed by the trial court restored. [para 9 & 10] [373-D-F]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 511 of 2014.

From the Judgment & Order dated 14.11.2008 of the High Court of Patna Criminal Revision No. 46 of 2008.

G Mohit Kumar Shah, Gopal Singh, Manish Kumar, Chandan Kumar, Gaurav Agrawal for the appearing parties.

The Judgment of the Court was delivered by

H RANJAN GOGOI, J. 1. Leave granted.

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2. The first respondent Tunna @ Tunnu Mian @ Tunna Mian @ Mobin Ansari was committed to the Court of Sessions to face trial for offences under Sections 302/201 and 376 of the Indian Penal Code. The first respondent filed an application claiming to be a juvenile and in support thereof he had enclosed a certificate issued by the Government Primary Urdu School, Shekhawa, Basantpur, Block Mainatand wherein his date of birth was mentioned as 15.01.1991. The date of occurrence of the offences alleged in the present case is 16.11.2006. A B

3. The learned Trial Court, for reasons not very clearly stated, recorded the finding that the certificate produced by the first respondent was a forged one. Accordingly, the first respondent was sent for medical examination by a Board. Though the report of the Board was to the effect that the first respondent was 17 years of age, the learned Trial Court took the view that the said opinion would admit the possibility of a variation of 2 years. Consequently, the learned Trial Court by order dated 24.12.2007 refused to accept the claim of juvenility raised on behalf of the first respondent. C D

4. Aggrieved, the first respondent moved the Patna High Court. By order dated 14.11.2008 the High Court interfered with the order of the learned Trial Court and allowed the application of the first respondent herein declaring him to be a juvenile and to be of sixteen and a half years of age on the date of alleged occurrence. Challenging the aforesaid finding of the High Court, the complainant, who is the father of the victim of the crime, has approached this Court. E F

5. A reply has been filed on behalf of the first respondent in the present appeal wherein reliance has, once again, been placed on the school certificate issued by the Government Urdu School Shekhwa, Basantpur, Distt. East Champaran reference to which has been made earlier. The first respondent in his reply has also contended that the report of the medical examination clearly indicates that he was a minor on the relevant date and that there is no reason as to why the said H

A medical report should not be accepted.

6. The appellant has been allowed by this Court leave to bring on record certain documents which, according to the appellant, have a significant bearing to the issues arising in the present case.

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The first document that has been brought on the record of the present appeal is a letter/certificate dated 3.4.2013 issued by the Principal, Government Primary Urdu School, Shekhawa, Basantpur, Block-Mainatand wherein it is mentioned that no student having the name and particulars of the first respondent had ever studied in the school in question and that the certificate issued in the name of the school is a forged document. The second document is another certificate issued by the Principal, Government Primary School, Purbi Paukuahwa, Block-Mainatand, West Champaran, Bihar which states that the particulars of the first respondent are entered in the records of the said school and that his date of birth as mentioned in the school admission register is 28.11.1985. As the controversy arising in the present case is capable of being resolved on the basis of the aforesaid two documents, reference to any other document would be superfluous and hence is avoided.

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8. The first respondent has not filed any affidavit or objections denying the veracity of the two certificates referred to above. However, as the Court had to be satisfied with the authenticity of the said two documents, on 27.01.2014 the following order was passed.

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"In order to find out the age of Respondent No.1-accused on the date of occurrence, we direct the Principal, Government Primary Urdu School, Shekhawa, Basantpur, Block-Mainatand, West Champaran, Bihar and Principal, Government Primary School, Purbi Paukuahwa, Block-Mainatand, West Champaran, Bihar to appear alongwith the connected original record before this Court on 24th

February, 2014.

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List on 24th February, 2014"

9. Pursuant thereto the Principal of the two schools appeared in Court today alongwith the records in original. The said records would indicate that there is no record of the first respondent being enrolled or having studied in the Government Primary Urdu School, Shekhawa, Basantpur, Block-Mainatand. From the records of the Government Primary School, Purbi Paukuahwa, Block-Mainatand, West Champaran, Bihar it is evident that the first respondent had enrolled himself in the said school on 08.01.1996 and his date of birth is recorded in the admission register as 28.11.1985. The relevant records placed before this Court by the Principals of the two schools pursuant to the order dated 27.01.2014 therefore indicates that the claim of the first respondent to be a juvenile remains unsubstantiated and, in fact, the records of the school where he was enrolled would indicate that his date of birth is 28.11.1985. Properly calculated with reference to the date of the alleged crime, the first respondent was aged about 21 years on the relevant date and therefore he was not a juvenile.

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10. We, therefore, cannot sustain the order dated 14.11.2008 passed by the High Court. In the result, we allow this appeal and set aside the said order dated 14.11.2008 passed by the High Court and restore the order dated 24.12.2007 passed by the learned Trial Court.

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R.P.

Appeal allowed.