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PAPPU

V.

SONU AND ANR.

Criminal Appeal No. 449 of 2009

B

MARCH 6, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ)

C

UTTAR PRADESH JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2004:

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r. 22(5) – Claim of juvenility – Rejected by trial court – High Court in revision petition holding the documents relied upon by accused and his mother’s statement not reliable, but relying upon medical certificate holding the accused below 18 years at the time of commission of offence – HELD: Abrupt conclusion of High Court about age cannot be maintained – However, it would be open to accused during trial to establish his claim.

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The instant appeal was filed by the informant challenging the order of the High Court in a revision petition holding that accused-respondent no. 1, who was facing a criminal trial, was juvenile at the time of commission of the offence.

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Allowing the appeal, the Court

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HELD: The High Court found that the school certificates produced clearly belied the claim of accused-respondent No.1. The High Court has categorically found that the various records relied upon by respondent No.1 were not reliable. The trial court and the High Court both have held that the mother’s evidence was also not acceptable because it was based on estimations. Strangely, the High Court relied upon the certificate of a doctor which did not even indicate the basis on which it

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was observed that the radiology age of respondent No.1 was about 18 years. The abrupt conclusion of the High Court about the age of respondent No.1 cannot be maintained. However, it is open to respondent No.1 during trial to establish by cogent and credible evidence about his age and his claim that he was a juvenile at the time when the occurrence took place. [para 7-8] [110-F-H; 111-A-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 449 of 2009

From the Judgement and Order dated 07.09.2007 of the High Court of Judicature at Allahabad in Criminal Revision No. 1992 of 2007.

P. Radha Rani, R.S. Krishnan, P. Vijaya Kumar, D. Mahesh Babu, for the Appellant.

B.S. Jain, Ajay Veer Singh Jan, Mamta Jain, Manish Raghav, Vipin Gupta, Ratnakar Dash, Manoj Mishra, Kamlendra Mishra, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the Writ Petition filed by respondent No.1. Respondent No.1 filed a Revision Petition against the order dated 10.7.2007 passed by learned Additional Sessions Judge Fast Track Court-I, Mazaffarnagar. The petition filed by respondent No.1 claiming that he was a juvenile was rejected. The respondent No.1 was facing trial in S.T. No.67/07. During trial he moved the application marked 13Kha for declaring him as juvenile pleading that his date of birth was 1.1.1989.

3. In support of the claim he relied on various records as

A well as the statements of his father and mother. Objections were
filed by the State and the informant stating that the applicant
was a major on the date of occurrence and, therefore, the
application was liable to be rejected. The learned Additional
Sessions Judge did not rely on the educational records and the
B statements of the mother as well as of the medical opinion. It
was concluded that the applicant was not juvenile. The High Court
in the revision petition accepted that the school records
produced by the applicant were not reliable and the statement
of his mother also did not support his case. But solely on the
C basis of a certificate issued by the doctor it was concluded that
he was below 18 years of age on the date of occurrence and,
therefore, in terms of Rule 22(5) of Uttar Pradesh Juvenile
Justice (Care and Protection of Children) Rules, 2004 the
applicant was to be treated as a juvenile.

D 4. In support of the appeal, learned counsel for the informant
submitted that after taking the view that the educational records
belied the claim of the applicant and the mother's statement
was also not accepted. Merely on the basis of a certificate which
does not even indicate the basis for determination of the age,
E the High Court should not have held that respondent No.1 was
a juvenile.

5. Learned counsel for respondent No.1 on the other hand
supported the order.

F 6. Learned counsel for the State supported the stand taken
by the appellant, submitting that the High Court's judgment is
clearly unsustainable.

G 7. It is to be noted that the High Court found that the school
certificates produced clearly belied the claim of respondent
No.1. The High Court has categorically found that the various
records relied upon by respondent No.1 were not reliable. The
trial Court and the High Court also held that the mother's
evidence was also not acceptable because it was based on
estimations. Strangely the High Court relied upon a certificate
H of a doctor which did not even indicate the basis on which it

was observed that the radiology age of respondent No.1 was about 18 years. A

8. That being so, the abrupt conclusion of the High Court about the age of respondent No.1 cannot be maintained. However, it is open to respondent No.1 during trial to establish by cogent and credible evidence about his age and his claim that he was a juvenile at the time when the occurrence took place. B

9. The appeal is allowed.

R.P.

Appeal allowed.