PETITIONER:
UMESH CHANDRA

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT02/04/1982

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
DESAI, D.A.
VARADARAJAN, A. (J)

CITATION:
1982 AIR 1057 1982 SCR (3) 583
1982 SCC (2) 202 1982 SCALE (1)335
CITATOR INFO :
RF 1987 SC1501 (2,9)
RF 1991 SC1494 (7)

ACT:
Rajasthan Children Act,, 1970-Material date for determining age of delinquent-Is it date of commission of offence or date of trial ?
Indian Evidence Act 1872-S. 35-Relevance of entry in school record for proof of age-Should the record be kept by public officer ?

HEADNOTE:
The Rajasthan Children Act, 1970, provides that any person below the age of 16 years should be presumed to be a child and that a delinquent child should be tried by a Children's court in accordance with the procedure laid down therein.
The appellant was charged under ss. 364 and 302, I.P.C., in connection with an occurrence that took place in Tonk district on March 12, 1973. A preliminary objection that the Sessions Judge was not competent to try the case of The appellant as he was a child under the provisions of the Children Act was overruled by the trial court.
The revision filed by the appellant against the decision of the trial court was dismissed by the High Court which held that the Children Act was not applicable to the appellant as that Act had not been enforced in Tonk district on the date of the occurrence. The High Court further held that the appellant had failed to prove that he was below the age of 16 years.
On being directed by this Court to ascertain the actual date of birth, the High Court held that the date of birth of the appellant was September 22, 1956; and, therefore, he was over 16 years on the date of the occurrence. The High Court rejected the documents produced from the first two schools attended by the appellant which showed his date of birth to be June 22, 1957, for the reason that those documents had not been kept or made by a public officer; it relied on an affidavit furnished by the father of tho appellant while admitting him to the third school in which the date of birth had been changed to September 22, 1956. The explanation of

the appellant's father that the date of birth had been changed to fulfil the requirement of age under the Rajasthan Board of Secondary Regulations to enable the appellant to appear in the Higher Secondary Examination at the appropriate time was not accepted.

Allowing the appeal,

584

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HELD: 1. (a) The relevant date for applicability of the Rajasthan Children Act, 1970 so far as the age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial as is clear from the provisions of ss. 3 and 26 of the Act. [594 C]

(b) At the time of the occurrence, the appellant was undoubtedly a child within the provisions of the Act. [592 H]

(c) The question whether the appellant could be tried as a child if he had become more than 16 years by the time the case went up to the court, does not survive as the Act has now been enforced in the entire State. A combined reading of ss. 3 and 26 clearly shows that the statute takes care of contingencies where proceedings in respect of a child were pending in any court on the date on which the Act came into force. Section 26 in terms lays down that the court should proceed with the case but after having found that the child has committed the offence it is debarred from passing any sentence but is obliged to forward the child to the Children's court for passing orders in accordance with the Act. [592 H; 593 A; 593 F-G]

(d) The judgment of the Sessions Judge as affirmed by the High Court be set aside and the Additional Sessions Judge, Jaipur, be directed to try the accused and if he gave a finding that the accused was guilty, he shall forward the accused to the Children's court for receiving sentence in accordance with the provisions of the Act. [594 E]

2. There is no legal requirement under s. 35 of the Evidence Act that the public or other official book should be kept only by a public officer; all that is necessary is that the document should be maintained regularly by a person whose duty it is to maintain the document. [588 G; 589 C]

Mohd. Ikram Hussain v. State of U.P., [1964] 5 S.C.R. 86, 100 & Abdul Majid v. Bhargavam, A.I.R. 1963 Ker. 18 referred to.

The Rajasthan Children Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, its provisions should be liberally and meaningfully construed so as to advance the object of the Act. The Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. [524 D; 593 H; 594 A]

In the instant case there are two documents of two different schools showing the date of birth of the appellant as June 22, 1957 and both these documents have been signed by his father and were in existence ante litem motam. Hence, there could be no ground to doubt the genuineness of these documents. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth and there could Dot have been any motive on the part of the parents to give a false date of birth because it was his first admission to a school at a very early age. The school to which the appellant was admitted enjoyed good reputation of authenticity.

585

there had been any element of suspicion, the admission register and the scholar's register would have been corrected by the headmistress of the school. [591 D; 590 D; 590 H]

M/s. Gannon Dunkerlay & Co. Ltd. v. Their Workmen, [1972] 3 S.C.C. 443 referred to.

3. The appellant's father has given a cogent reason for changing the date of birth and there is no reason for not accepting his explanation particularly because the offence was committed seven years after changing the date of birth. [592 C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 439 of 1976.

Appeal by special leave from the judgment and order dated the 23rd April, 1976 of the Rajasthan High Court in Criminal Revision No. 300 of 1974.

K.K. Venugopal, S.S. Khanduja, and G.C. Mishra for the Appellant.

B.D. Sharma for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment dated June 29, 1974 of the Rajasthan High Court overruling a preliminary objection taken by the accused before the Sessions Judge to the effect that the Sessions Judge, Tonk was not competent to try the case as the accused Umesh Chandra was a child as contemplated by the provisions of the Rajasthan Children Act, 1970 (hereinafter referred to as the 'Act') on the date of the alleged occurrence. This Act appears to have been passed by the Rajasthan Legislature, but after receiving assent of the President was enforced in various districts from time to time. Under the provisions of the Act any person below the age of 16 (sixteen) would be presumed to be a child and the trial of a delinquent child was to be conducted in accordance with the procedure laid down therein. The objection taken by the appellant was that as he was below the age of 16 at the time of the occurrence on 12.3.1973, he could not be tried by the Additional Sessions Judge, Tonk or the Additional Sessions Judge, Jaipur city, to whom the case was transferred or 17.10.73

586

The Sessions Judge overruled the objection taken by the accused and therefore he filed a revision to the Rajasthan High Court against the order. The High Court after considering the oral and documentary evidence came to the conclusion that the Act was not applicable to the appellant for two reasons-(1) that it was not brought into force in Tonk at the time of the offence, and (2) that it was not proved by the accused that he was below the age of 16 on 12.3.1973, the date of the occurrence. The accused was charged for offences punishable under sections 364 and 302 of the Indian Penal Code. Aggrieved by the order of the High Court, the appellant moved this Court in special leave and at the time of granting special leave, this Court directed the High Court to return a finding of fact on the actual date of birth of the accused so that this Court may determine the applicability of the Act to the facts of the present case.

The High Court after reappraising the entire evidence-oral and documentary-by its Order dated 18.11.76 came to a clear finding that the age of Umesh Chandra at the time when

the offence was committed was 16 years 5 months and 20 days and that the exact date of birth of the appellant was proved to be 22.9.1956. After the finding of fact called for from the High Court was sent to this Court, the appeal was placed for hearing before us.

In support of the appeal, the learned counsel for the appellant has assailed the finding of the High Court-that the age of the appellant was above 16 years-and it was contended that the High Court has based its decision on wholly irrelevant material and has also committed errors of law in appreciating important documentary evidence.

Another point that was argued before us was as to the application of the Act to Tonk, where the offence was committed. As, however, the Act has now been enforced in the entire State, this question no longer survives because where a situation contemplated by s. 26 of the Act arises, an accused, who is found to be a child, has to be forwarded by the Sessions Court to the Children's court which can pass appropriate sentence. Where however proceedings against a child are pending before Sessions Judge, s. 26 of the Act enjoins a duty on the Court in which the proceeding in respect of the child is pending on the date on which the Act is extended to the area to act in the manner therein prescribed. In this eventuality, the Court is under an obligation to proceed With the trial and record
587
a finding as if the Act does not apply. But after concluding the trial and recording a finding that the child had committed an offence, the Court cannot pass any sentence but the Court is under a statutory obligation to forward the child to the Children's court which shall pass orders in respect of that child in accordance with the provisions of the Act, as if it has been satisfied on inquiry under the Act that the child bas committed the offence. In view of this provision, s. 21 would be attracted and the Children's court will have to deal with the child under s. 21.

Thus, the main point for consideration in this case is as to what is the exact date of birth of the appellant, Umesh Chandra. The High Court appears to have brushed aside the documentary evidence produced by the appellant mainly on the ground that subsequent documents clearly proved that the father of the accused had not correctly mentioned the date of birth in the previous schools attended by him (accused) and later corrected his date of birth by an affidavit which was accepted by the High Court to be the correct date. The High Court also rejected the oral evidence adduced by the appellant as also the horoscope produced by his father.

We agree with the High Court that in cases like these, ordinarily the oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. To this extent, we agree with the approach made by the High Court.

Coming now to the facts on the basis of which the appellant sought protection to be tried only under the Act; according to the testimony of the father of the appellant he was. born on 22.6.57 and was aged 15 years 9 months on 12.3.1973-the date of the occurrence.

It is, however, not disputed that at the time when the appellant was born, his father was posted in a small village (Dausa) where the maternal grandfather of the appellant had

lived and perhaps he was not meticulous enough to report the birth of his children. There is nothing to show the birth of the appellant nor any evidence has been produced on this aspect of the matter. There is also nothing to show that the dates of birth of the other children of
588
Gopal (the father) were registered in any Municipal register or in chowkidar's register. We have mentioned this fact because the High Court seems to have laid special stress and great emphasis on the non-production of any reliable record to prove that the birth of the appellant had been entered therein. It is common knowledge that in villages people are not very vigilant in reporting either births or deaths and, therefore, an omission of this type cannot be taken to be a most damaging circumstance to demolish the case of the appellant regarding his actual date of birth.

The first document wherein the age of the appellant was clearly entered is Ext. D-1 which is the admission form under which he was admitted to class III in St. Teressa's Primary School, Ajmer. In the admission form, the date of birth of the appellant has been show a as 22.6.1957. The form is signed by Sister Stella who was the Headmistress. The form also contains the seal of the school, DW, Ratilal Mehta, who proved the admission form, has clearly stated that the form was maintained in the ordinary course of business and was signed only by the parents. The evidence of Ratilal Mehta (DW 1) is corroborated by the evidence of Sister Stella (DW 3) herself who has also endorsed the fact of the date of birth having been mentioned in the admission form and has also clearly stated on oath that the forms were maintained in regular course and that they were signed by her. She has also stated that at the time when the appellant was first admitted she was the headmistress of St. Teressa Primary School, Ajmer. The High Court seems to have rejected this document by adopting a very peculiar process of reasoning which apart from being unintelligible is also legally erroneous. The High Court seems to think that the admission forms as also the School's register (Ext. D-3) both of which were, according to the evidence, maintained in due course of business, were not admissible in evidence because they were not kept or made by any public officer. Under s. 35 of the Evidence Act, all that is necessary is that the document should be maintained regularly by a person whose duty it is to maintain the document and there is no legal requirement that the document should be maintained by a public officer only. The High Court seems to have confused the provisions of sections 35, 73 and 74 of the Evidence Act in interpreting the documents which were admissible not as public documents or documents maintained by public servants under sections 34, 73
589
or 74 but which were admissible under s. 35 of the Evidence Act which may be extracted as follows:

> "35. Relevancy of entry in public record made in performance of duty
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> An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such books, register or record is kept, is itself a relevant fact."
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> (Emphasis ours)

A perusal of the provisions of s. 35 would clearly reveal that there is no legal requirement that the public or

other official book should be kept only by a public officer but all that is required is that it should be regularly kept in discharge of her official duty. This fact has been clearly proved by two independent witnesses, viz., DW 1, Ratilal Mehta and DW 3, Sister Stella. The question does not present any difficulty or complexity as in our opinion the section which would assist in this behalf is s. 35 of the Evidence Act which provides for relevancy of entry in the public record. In this connection we may refer to a decision of this Court in Mohd. Ikram Hussain v. State of U.P., where Hidayatullah, J. speaking for the Court, observed as under:

> "In the present case Kaniz Fatima was stated to be under the age of 18. There were two certified copies from school register which show that on June 20, 1960, she was under 17 years of age. There was also the affidavit of the father (here evidence on oath) stating the date of her birth and the statement of Kaniz Fatima to the police with regard to her own age. These amounted to evidence under the Indian Evidence Act and the entries in the school registers were made ante litem motam."

This topic has been elaborately dealt with particularly in regard to the entries in School Register and the admission forms in the case of-Abdul Majid v. Bhargavam. In these circumstances,

590

the view of the High Court with regard to s. 35 is plainly untenable and ss. 73 and 74 are utterly irrelevant.

Further, the High Court was of the view that as the documents produced by the Teressa Primary School were kept in loose sheets, no reliance can be placed on them. This fact is admitted but the headmistress has explained that the admission forms were bound much after the date of birth was recorded and hence it cannot be presumed that the documents were not kept in the regular course of business.

Moreover, the School where the documents were maintained was an English public school and the record maintained by it was undoubtedly unimpeachable and authentic and could not be suspected or presumed to be tampered with. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth or for that matter the exact date on which he was born and there could not have been any motive on the part of the parents of the accused to give a false date of birth because it was his first admission to a school at a very early age. Further, the school to which the appellant was admitted being a Public School enjoyed good reputation of authenticity.

In M/s. Gannon Dunkerlay & Co. Ltd. v. Their Workmen this Court made the following observations:

> "In fact, if the register had been prepared at one sitting for purposes of these cases, the Company would have taken care that no suspicious circumstance comes into existence and, if, by chance, any error was committed, it could have' prepared another register in lieu of Ext. C-1. The fact that this was not done shows that this register is the register kept in the course of business and, hence, there is no reason to doubt the entries made in it."

These observations fully apply to the facts of the present case because if there had been any element of suspicion in giving the date of birth, the admission register and the Scholar's register would have been corrected by the headmistress of the school.

591

Exts. D-1 and D-2, mentioned above, are corroborated by subsequent documentary evidence. It appears that an 1.7.65, the boy was admitted to 3rd standard (equivalent to 5th class) in St. Paul's school, Jaipur after the appellant's father was transferred from Ajmer to Jaipur. Here also the document shows that the date of birth given was the same, namely, 22.6.1957.

Thus, consistently on two occasions, starting from 1963 and ending in 1965, the date of birth was mentioned in the relevant documents as 22.6.1957. This Court in Mohd. Ikram Hussain v. State of U.P. & Ors. (Supra) has held that copies of school certificates or the affidavit of the father constitute good proof of age, vide observations extracted herein-before.

In the instant case also there are two documents of two different schools showing the age of the accused-appellant as 22.6.57 and both these documents have been signed by his father and were in existence ante litem motam. Hence, there could be no ground to doubt the genuineness of these documents and the High Court committed a serious error of law in brushing aside these important documents.

Another circumstance which weighed with the High Court was that when the boy was admitted in St. Paul's school, no transfer certificate appears to have been taken. This by itself is not sufficient to dislodge the case of the appellant unless a transfer certificate was taken and it had shown that the date of birth given there did not tally with the documents (Exts. D-1 to D-4).

It appears that as the father of the appellant was subsequently transferred from Jaipur sometime in June 1966 to Dhausa and he was admitted to the Sanskrit Pathshala in Dhausa, for the first time in this school the date of birth of the appellant was changed from 22.6.57 to 22.9.56. The explanation given by his father is that as by this time the boy had become almost 10 years of age and as clause 10 of Chapter XVIII of the Rajasthan Board of Secondary Education Regulations required that no candidate could take the Higher Secondary Examination until he had attained the age of 15 years on the 1st of October of the year in which the Examination was held, he had to give an affidavit to change this fact in order to enable his son (appellant) to appear in the Higher Secondary Examination. This position was not disputed by the State. The High Court seems to have made much of this lacuna and has gone
592
to the extent of labelling Gopal Sharma, appellant's father, as a liar having gone to the extent of making a false affidavit. Here also, we think the High Court has taken a most artificial and technical view of the matter. In our country, it is not uncommon for parents sometimes to change the age of their children in order to get some material benefit either for appearing in examination or for entering a particular service which would be denied to a child as under the original date of birth he would be either under-aged or ineligible.

Thus, the appellant's father has given a cogent reason for changing the date of birth and there is no reason not to accept his explanation particularly because the offence was committed seven years after changing the date of birth, and, therefore, there could be no other reason why Gopal Sharma should have gone to the extent of filing an affidavit to change the date, except for the reason that he has given.

It was also argued that in the insurance policy, the appellant's mother had shown his age as 10 years without giving the exact date of birth. The age of the appellant was

given as a rough estimate in the insurance policy but as the policy was not in the name of the appellant, nothing turns upon this fact particularly because by and large giving allowance for a few months this way or that way the boy was about 10 years old when the policy was taken. The High Court, therefore, was wrong in attaching too great an importance to this somewhat insignificant fact.

For these reasons we are satisfied that these circumstances also do not put the case of the appellant out of court.

These are the main reasons given by the High Court for distrusting what, in our opinion, seems to be unimpeachable documentary evidence produced by the appellant to show that his exact date of birth was 22.6.57 and not 22.9.56 as altered by his father later.

Another question argued at the Bar was as to what is the material date which is to be seen for the purpose of application of the Act. In view of our finding that at the time of the occurrence the appellant was undoubtedly a child within the provisions of the Act, the further question if he could be tried as a child if he had become more than 16 years by the time the case went up to the
593
court, does not survive because the Act itself takes care of such a contingency. In this connection sections 3 and 26 of the Act may be extracted thus:

> "3. Continuation of inquiry in respect of child who has ceased to be child.
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> Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child.
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> xx xx xx
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> 26. Special provision in respect of pending cases.
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> Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the children's court which shall pass orders in respect of that child in accordance with the provision of this Act as if it has been satisfied on inquiry under this Act that the child has committed the offence."

A combined reading of these two sections would clearly show that the statute takes care of contingencies where proceedings in respect of a child were pending in any court in any area on the date on which the Act came into force. Section 26 in terms lays down that the court should proceed with the case but after having found that the child has committed the offence it is debarred from passing any sentence but would forward the child to the children's court for passing orders in accordance with the Act.

As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their
594
criminal acts on the footing that their mind at that age

could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, ss. 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

The High Court has failed to take notice that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, its provisions should be liberally and meaningfully construed so as to advance the object of the Act. Bearing this in mind we have construed the documents in the instant case.

We, therefore, allow the appeal to the extent that while setting aside the judgment of the Sessions Judge, as affirmed by the High Court, we direct the Additional Sessions Judge, Jaipur, to try the accused and if he gives a finding that the accused is guilty, he shall forward the accused to the Children's court for receiving sentence in accordance with the provisions of s. 26 of the Act.

H.L.C. Appeal allowed.

595