

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 449 OF 2009
(Arising out of S.L.P.(Crl.) No.6505 of 2007)

Pappu

....Appellant

Versus

Sonu and Anr.

....Respondents

J U D G M E N T

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 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 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 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.

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, 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.

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

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 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.

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.

9. The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 06, 2009