

CASE NO.:
Appeal (crl.) 113 of 2002

PETITIONER:
RAJINDER CHANDRA

Vs.

RESPONDENT:
STATE OF CHHATTISGARH & ANR.

DATE OF JUDGMENT: 24/01/2002

BENCH:
R.C. Lahoti & Brijesh Kumar

JUDGMENT:

R.C. Lahoti, J.

Leave granted.

Pranjal Tiwari, the accused respondent No.2, has been apprehended on 27.2.1997 for an offence under Section 302/34 IPC committed on the same day. The accused claimed himself to be a juvenile as having not attained the age of 16 years and, therefore, entitled to the benefit of the Juvenile Justice Act, 1986. An enquiry was held. The learned Judicial Magistrate First Class and the Sessions Court held the accused not to be a juvenile. The accused preferred a revision in the High Court which has been allowed. The orders impugned before the High Court have been quashed and the accused has been held to be a juvenile. The complainant, father of the victim in the incident, has preferred this appeal by special leave.

At the enquiry, on behalf of the accused, mark sheets of Class VIII and High School, birth certificate, horoscope and entry in Kotwar Book were tendered in documentary evidence. In all of these documents, the date of birth of the accused is entered as 30.9.1981. In oral evidence, Savita Tiwari, PW1, mother of the accused, Gopal Tiwari, PW2, father of the accused, Vinod Kumar Mishra, PW3, Head Master of Saraswati Shishu Mandir, where the accused took his primary education, R.S. Nayak, PW4, Assistant Teacher of the High School where the accused had taken subsequent education and whereat his date of birth was entered into records on the basis of transfer certificate issued by Saraswati Shishu Mandir, Uttam Kumar Soni, PW5, Assistant Teacher, Examination Centre, Government Basic School, Kota, who proved the mark sheets and Hari Shankar Tandon, Kotwar, who brought the birth and death register wherein the factum of birth of the accused is recorded, were examined. The learned Magistrate and the learned Sessions Judge scrutinized the evidence adduced on behalf of the accused by applying the principle that it was the accused who was claiming the benefit of the Juvenile Justice Act, and therefore the onus lay on him to prove that he was a juvenile and in as much as the oral and documentary evidence adduced by him left open room for doubt, the onus could not be said to have been discharged. The accused was also subjected to radiological examination. In ossification test report, he was opined to be of 15-16 years of age. The learned Sessions Judge, by reference to Modi's Medical Jurisprudence, held that a variation of 2 to 3 years on

either side was permissible in the result of ossification test, and therefore, on the basis of such test no definite opinion could be formed.

The High Court, in exercise of its revisional jurisdiction, found the findings arrived at by the learned Sessions Judge and the Magistrate to be legally infirm and hence not sustainable. The High Court noticed that although in the marks sheet of Class VIII there appeared to be some over writing on the year 1981 but the same was attested by the officer who had issued it. Moreover the date of birth was entered in figures and words both. While in the figures there was an over writing but there was no over writing in the words wherein the date was clearly mentioned as "thirtieth September nineteen eighty one" and, therefore, there was no room for doubt. In the birth and death register kept by Kotwar, there was some doubt whether the date of birth was recorded as 30.6.1981 or 30.9.1981 but the doubt was removed by reference to other entries in vicinity. The factum of Gopal Prasad Tiwari, father of the accused, having begotten a son, was entered at sl. No. 29. The preceding two entries referable to other children born to others, at Sl. Nos. 27 and 28 were dated 23.8.1981 and 15.9.1981 respectively and, therefore, the relevant entry at Sl. No. 29 could be of 30.9.1981 only and not of 30.6.1981. Thus, in substance, the High Court has concluded that the doubts assumed to be in existence by the learned Sessions Judge were not reasonable doubts and in the light of the explanation furnished by the accused, there was hardly any room for doubt and a high degree of probability was raised that the date of birth of the accused was 30.9.1981. In our opinion, the High Court has not erred in arriving at the conclusion which it has reached and it rightly interfered with the orders of the two courts below because if allowed to stand they would have occasioned failure of justice.

It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In *Arnit Das Vs. State of Bihar*, (2000) 5 SCC 488, this court has, on a review of judicial opinion, held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this court, squarely applies to the facts of the present case.

For the foregoing reasons, the appeal is held devoid of any merit. It is dismissed. The order of the High Court is maintained.

J.
(R.C. LAHOTI)

J.
(BRIJESH KUMAR)

January 24, 2002