

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.697 of 2013

SHISHIR TIWARI

Appellant(s)

VERSUS

NEERAJ @ BABLOO & ANR.

Respondent(s)

O R D E R

1. The present appeal is at the instance of the informant, aggrieved over the decision of the High Court of Delhi in granting the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No.56 of 2000) (hereinafter referred to as "Act, 2000") as it stood at the relevant point of time.

2. Respondent No.1 was convicted of the heinous offence of murdering a child and a lady. Pending the appeal, a plea was raised on juvenility. The Division Bench of the High Court of Delhi directed the Registrar to conduct an inquiry and file a report as there was an element of dispute with respect to the two documents filed. The State was given an opportunity to cross-examine the witnesses called for who were made to depose. Accordingly, a report was submitted before the Court. An Ossification Test was also conducted on Respondent No. 1.

3. The High Court passed the following order upon consideration of the relevant materials:-

"21. After considering the two dates of birth entered in the school record, we find that if the date of birth of

the accused is taken as 9th August, 1986, then his age at the time of commission of offence works out as 17 years 255 days and if his date of birth is taken as 9th August, 1988, (the date of occurrence being 22nd April, 2004); the Appellant's age at the time of commission of offence works out as 15 years 255 days. In any case, the Appellant was below 18 years of age at the time of the commission of offence. After considering margin of error of one year, even medical evidence points to his age being about 18 years.

22. The nominal roll of the Appellant reveals that he has already spent more than 7½ years in jail custody which is more than what could have been awarded to him, had he been tried by the Juvenile Justice Board. Since the Appellant has already spent more than 7½ years in jail, in excess to the maximum period for which he could have been sent by the Juvenile Justice Board to special home, sending him to the Juvenile Justice Board at this stage in accordance with the provisions to Section 7(a) sub-section (2) of the Act of 2000 would cause gross injustice to him. Therefore, we deem it appropriate not to remit the matter to the Juvenile Justice Board as it would not only be prejudicial to the interest of the Appellant who was a juvenile at the time of the commission of offence but would also not sub-serve any public interest."

4. The learned counsel appearing for the Appellant submitted that Respondent No.1 has committed a heinous offence. The procedure contemplated under the Act, 2000 has not been followed in letter and spirit. The Registrar has not given his specific finding. The Ossification Test cannot be the basis to determine the question of juvenility as held by this Court in Writ Petition (Cr1.) No.121 of 2022 - Vinod Katara Vs. State of Uttar Pradesh decided on 12.09.2022.

5. The learned counsel appearing for Respondent No.1 submits that the mandate of Section 7(a) of the Act, 2000 read with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, has been duly complied with. The Registrar not being an

adjudicating authority, the Court has rightly exercised its power. Though, there was an apparent discrepancy between the two documents, even if, one takes into consideration either of them, the respondent No.1 would still be a minor at the time of committing the offence. The Ossification Test also re-confirms the aforesaid fact.

6. We do not wish to reiterate the settled position of law that the plea of juvenility can be raised at any point of time and the Act, 2000 has been introduced to deal with a juvenile in conflict with law. As the documents relied upon are not in dispute though against one, there is some evidence of interpretation. However, the findings rendered under the impugned order that even under the other document, Respondent No.1 would continue to be a juvenile is perfectly correct, a fact supported by the Ossification Test.

7. Though, it is contended by the learned counsel appearing for the Appellant that due procedure has not been followed, as Section 7(a) read with Rule 12 only facilitates the Court concerned to undertake the said exercise, which was actually done under the impugned order by calling for a report after a due inquiry, there is no need for the Registrar to give a specific finding and the Court has taken into consideration the contents of the inquiry for arriving at its conclusion. The judgment relied upon by the learned counsel appearing for the Appellant has got no relevance to the case at hand as far as we are not dealing with the evidentiary value of an Ossification Test per se but the application of the document.

8. In such view of the matter, we are not inclined to interfere with the order impugned. The Criminal Appeal stands dismissed.

9. Pending applications, if any, also stand disposed of.

.....J.
(M.M. SUNDRESH)

.....J.
(PRASHANT KUMAR MISHRA)

New Delhi;
12th October, 2023.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No(s).697/2013

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Date : 12-10-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRAFor Appellant(s) Dr. Vijay Kumar Shukla, Adv.
Ms. Nupur Shukla, Adv.
Mr. Anirudh Gulati, Adv.
Mr. Nischal Kumar Neeraj, AORFor Respondent(s) Mr. Mukesh Jain, AOR
Mr. Shreekant Neelappa Terdal, AORUPON hearing the counsel the Court made the following
O R D E RIn terms of the signed order, the Criminal Appeal is
dismissed.Pending application(s), if any, shall stand disposed
of.(RAVI ARORA)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(signed order is placed on the file)