

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1193 OF 2006

ABUZAR HOSSAIN @ GULAM HOSSAIN

.....APPELLANT

VERSUS

STATE OF WEST BENGAL

.....RESPONDENT

O R D E R

Heard learned counsel for the parties.

We are in receipt of Order No.110 dated 07.06.2013 submitted by the Court of the 13th Additional Sessions Judge, Alipore, South 24-Parganas.

On the issue of the age of the appellant - Abuzar Hossain @ Gulam Hossain, the learned Additional Sessions Judge has recorded the following observations:

"If the Transfer Certificate is accepted then the age of the victim would be 14 to 15 on the date of incident i.e. on 11.02.2001 but it is nobody's case that the victim was only 14 to 15 on the date of incident. However, the Admission Register brought by the said witness Syed Kawnain Ashan did not accompany any such Birth Certificate of the accused. There is no note also as to which document was consulted at the time of making entries in the Admission Register. As per evidence of the said witness the Transfer Certificate was written by the Headmistress but

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Satish Kumar Yadav  
Date: 2014.08.23

there is no evidence that either this witness was

present at the time of issuance of the Transfer Certificate or he has got any personal knowledge

12:57:33 IST  
Reason:

regarding the entries in the Transfer Certificate. Obviously, a Darawan (Gate Keeper) may not or should not have any personal knowledge regarding

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the entries in the Admission Register in respect of date of birth of a particular student. So, his evidence cannot be accepted as sacrosanct. However, if we accept the present age of the accused as 30 as per Medical Report then his age

was 17 to 18 on the date of incident but if we hold that his age was more than 30 then it would be more than 17 to 18 on the date of incident. But as the present age mentioned by the Medical Expert as 30 to 40 i.e. on the range of a decade so the actual age of the victim on the date of incident cannot be ascertained from the medical evidence. In this context I should mention that the accused after medical examination did not appear before Court on subsequent dates and the I.O. submitted that the accused again absconded and actually after being medically examined by the Medical Board neither the accused nor his Lawyer appeared before this Court and the accused-petitioner did not examine any other witness and did not produce any birth register or birth certificate during enquiry. So relying on the medical evidence it can be presumed only that the accused might be 17 to 18 at the relevant time subject to the approval of acceptance of the Hon'ble Supreme Court of India."

On the basis of the factual position indicated by the learned

Additional Sessions Judge, it is not possible for us to conclude

that the appellant - Abuzar Hossain @ Gulam Hossain was a juvenile

on the date of occurrence i.e. 11.02.2001.

One of the reasons

which has prompted us to reject the report is our serious dis-satisfaction of the Medical Report which was taken into consideration by the learned Additional Sessions Judge. As per the

Medical Report, based on the ossification test, it seems that the

appellant was shown to be between 30 to 40 years.

This range

itself leads to a serious ambiguity in the Medical Report.

Having been confronted with the situation emerging,

namely, that we would reject the claim of the appellant on the

issue of juvenility, learned counsel for the appellant submitted,

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that the appellant be subjected to fresh medical examination, so as

to ensure that he does not suffer a sentence in violation of the

provisions of the Juvenile Justice (Care and Protection of

Children) Act, 2000, for no fault of his own.

The instant prayer

made by the learned counsel for the appellant has been considered

by us and we find favour in the instant submission.

However, at

the instant juncture, it would not be possible for us to extend any indulgence to the appellant.

We therefore hereby direct the appellant to surrender

before the concerned Sessions Judge within three weeks from today.

It will be open to the appellant to move an application before the concerned Sessions Judge requesting him for a fresh ossification test. In case such an application is made by the appellant after he surrenders and is taken into custody, the concerned Sessions Judge will allow such an application requiring the appellant to be medically examined by the All India Institute of Medical Sciences, New Delhi. The appellant will be escorted by the police from custody, to the All India Institute of Medical Sciences, New Delhi. He shall bear not only the expenses of the police escort but also his personal travel expenses. Additionally, he would bear the cost that would be liable to be incurred for the above-mentioned test at the All India Institute of Medical Sciences, New Delhi. In case the appellant avails of the instant liberty granted to him, the All India Institute of Medical Sciences, New Delhi shall submit a report directly to this Court consequent upon his examination as expeditiously as possible.

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If a report is received from the All India Institute of Medical Sciences, New Delhi, the Registry is directed to list the matter again for consideration. As of now, the instant appeal is disposed of in the above terms.

.....J.  
(JAGDISH SINGH KHEHAR)

.....J.  
(ARUN MISHRA)

NEW DELHI;  
AUGUST 21, 2014.

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ITEM NO.112

COURT NO.7

SECTION IIB

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 S

Criminal Appeal No(s). 1193/2006

ABUZAR HOSSAIN @ GULAM HOSSAIN

Appellant(s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

(With appln. (s) for permission to file additional documents)

Date : 21/08/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR  
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr.Pradip Ghosh, Sr.Adv.  
Mr. Rauf Rahim, Adv.

For Respondent(s) Mr.Kabir Shankar Bose, Adv.  
Mr. Anip Sachthey, Adv.

Upon hearing the counsel the Court made the following  
O R D E R

The appeal is disposed of in terms of the signed order.

(SATISH KUMAR YADAV)  
COURT MASTER

(PHOOLAN WATI ARORA)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)

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ITEM NO.112(1)

COURT NO.7

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No(s).1397/2006

SERSAHA SHEIKH

Appellant(s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

Date : 21/08/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR  
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr.Pradip Ghosh, Sr.Adv.  
Mr.Chanchal Kumar Ganguli, Adv.  
Ms.Soumi Kundu, Adv.  
Mr.Anurag Rana, Adv.

For Respondent(s)

Upon hearing the counsel the Court made the following  
O R D E R

Learned counsel for the appellant seeks an adjournment so  
as to enable him to examine the record and evidence taken into  
consideration for the submission of the Enquiry Report dated  
10.06.2013.

List on 27.08.2014.

(SATISH KUMAR YADAV)  
COURT MASTER

(PHOOLAN WATI ARORA)  
ASSISTANT REGISTRAR

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ITEM NO.112(3)

COURT NO.7

SECTION IIB

S U P R E M E C O U R T O F  
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (Crl.) No(s).8768/2011

(Arising out of impugned judgment and order dated 20/08/2010 in Criminal Appeal No.592-SB passed by the Punjab and Haryana High Court at Chandigarh)

GAJINDER SARUP

Petitioner(s)

VERSUS

STATE OF HARYANA

Respondent(s)

(With office report)

Date : 21/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR  
HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr.Yogesh Swroop, Adv.  
Mr.Dushyant Swarup, Adv.

For Respondent(s) Mr.Vikas Sharma, Adv.  
Mr.Kamal Mohan, Gupta, Adv.

Upon hearing the counsel the Court made the following  
O R D E R

Learned counsel for the petitioner invited our attention to the Order dated 06.03.2013 submitted by the Additional Sessions Judge, Kurukshetra wherein it has been sought to be concluded that the date of birth of the petitioner - Gajinder Sarup was 25.05.1976. It has also accordingly been concluded that the petitioner was 16 years 9 months and 23 days old on the date of occurrence i.e. 17.03.1993.

Learned counsel for the respondent supports the claim of the petitioner, as he is of the view that there is no infirmity in

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the Report dated 06.03.2013. In view of the above, we have no hesitation in concluding, that the petitioner - Gajinder Sarup was a juvenile on the date of occurrence i.e. 17.03.1993.

Since there is no material before us indicating the sentence which the petitioner has already undergone, we consider it

just and appropriate to relegate the matter for further consideration to the concerned Juvenile Justice Board. The Registry is accordingly directed to remit the record of this case to the concerned Juvenile Justice Board within one week from today. The concerned Juvenile Justice Board shall examine the matter, and pass an appropriate order within a further period of two weeks.

The special leave petition is disposed of in the above terms.

(SATISH KUMAR YADAV)  
COURT MASTER

(PHOOLAN WATI ARORA)  
ASSISTANT REGISTRAR