

Dayachand

Vs

Sahib Singh and another

Criminal Appeal No. 182 of 1991

(B.C. Ray, J.S. Verma JJ)

05.03.1991

JUDGEMENT

VERMA, J.:-

1. This petition is for grant of special leave against the order dated 10-8-1990 passed by the High Court of Delhi in Criminal Revision No. 140 of 1989, by which the order dated 15-12-1988 passed by Shri P. D. Gupta, Metropolitan Magistrate, Delhi, holding that the respondent No. 1, Sahib Singh is not a juvenile, being above the age of 16 years, and affirmed by the order dated 12-5-1989 passed by Shri M. A. Khan, Additional Sessions Judge, Delhi, has been set aside and it was held that respondent No. 1, Sahib Singh's date of birth is 1-1-1973, according to which he was a juvenile, being below the age of 16 years on 26-7-1988, the date of the offence. This question arose on a bail application being moved in a murder case on the ground that the accused/respondent No. 1, Sahib Singh was below the age of 16 years on the date of offence. When the matter arising out of the bail application came to the High Court, by an order dated 13-10-1988, the High Court ordered an inquiry into the question of his age which led to the making of the above order by the Metropolitan Magistrate after the inquiry with the consequence stated.

2. Leave granted.

3. The offence of murder was committed on 26-7-1988, which led to the arrest and prosecution of respondent No. 1, Sahib Singh for that offence. In the aforesaid inquiry, directed by the High Court for deciding the question of bail of respondent No. 1, Sahib Singh, evidence was led by both sides which included the evidence of a Medical Board constituted for this purpose. At the inquiry, apart from the medical evidence, the prosecution examined H., J. Solomon, Head Master, St. John Secondary School, Kherakhurd, Delhi, to prove that the date of birth of respondent No. 1, Sahib Singh, recorded in that School was 12-2-1968 while the evidence of Shishu Pal, a teacher in M. C. Primary School, Ghanta Ghar, Delhi, and Ranbir Singh of the Government Boys School, Khera Khurd, Delhi, was adduced by the other side to prove his date of birth as 1-1-1973. The medical evidence comprises of the statement of Dr. C. P. Sharma, Radiologist, Hindu Rao Hospital, and Dr. M. P. Sarangi, Asstt. Professor of Forensic Medicine, Maulana Azad Medical College, New Delhi. This shows the age estimated on 16-3-1989 when Sahib Singh was medically examined by the Medical Board, to be not less than 20 years on that date. On the basis of this evidence, the Metropolitan Magistrate held it proved that Sahib Singh was above the age of 16 years on 26-7-1988, the date of offence. This view was affirmed by the learned Additional Sessions Judge. However, the High Court, in Revision, has taken a different view based on the evidence led on behalf of Sahib Singh and accepting the testimony of Sahib Singh's mother, Dhanpati, together with the evidence of Shishu Pal and Ranbir Singh it has been held that Sahib Singh's age was below 16

years on 26-7-1988, the date of offence. This appeal is against the High Court's order.

4. Having heard both sides and after a close scrutiny of the entire evidence led at the inquiry for the purpose of determining age of Shahib Singh, we have reached the conclusion that the High Court was not justified in interfering with the concurrent view taken by the Metropolitan Magistrate and the Additional Sessions Judge, on the question of Sahib Singh's case.

5. The medical evidence which includes the Age Estimation Report dated 16-3-1989, which was prepared after the medical examination of Sahib Singh, contains the opinion of Dr. M. P. Sarangi, Asstt. Professor, Department of Forensic Medicine, Maulana Azad Medical College, New Delhi and Dr. P. C. Dixit, Associate Professor of the same Department. The opinion expressed therein on the basis of the medical examination which included findings on radiological examination, is as under:-

"In my opinion based on physical, dental and radiological findings when taken together the age of the person examined is between 20 and 22 years, and can never be less than 20, years."

6. The report says that in the space behind the second molar, there was indication of eruption of the tooth and in the left lower jaw, the third molar was just visible. Sahib Singh also had a regular beard shaved cleanly and all the epiphyses at the wrist, elbow, shoulder and iliac crests had united while four pieces of the body of sternum were fused and the medial end of clavicle had also fused recently.

7. Shri Rajinder Sachar appearing on behalf of respondent No. 1, Sahib Singh, strenuously urged that the data showed at best that this was a border line case and, therefore, benefit should be given to the accused and he should be treated to be a juvenile below the age of 16 years on the date of offence, even if it was possible to take the view that he was slightly above the age of 16 years on that date. It is significant that even according to the date of birth given out by Sahib Singh as 1-1-1973, his age on 26-7-1988, the date of incident, would be approximately 15 years and seven months, i.e., only a few months less than 16 years. In a case like this, the conflicting evidence of the record from the two schools is not safe to rely on, particularly when the medical opinion, based on radiological examination and other physical characteristics, is available for determining the age of Sahib Singh more accurately. The data available as a result of the medical examination, apart from the opinion of the doctors based on the medical examination, with reference to Modi's Medical Jurisprudence, 21st Ed., shows that Sahib Singh's age on 16-3-1989, the date of medical examination, must have been definitely above 19 years since the fusion of some of the bones which was found on that date, could not occur below the age of 19 years at the minimum. This would mean that on the date of the offence, he must have been definitely above the age of 18 years at least. Shri Sachar contended that the table given in Modi's book for males of Bengal is not very helpful because Sahib Singh being a Punjabi, the minimum age in each case had to be reduced by two to three years. This conclusion reached by us takes into account even this argument of Shri Sachar and giving this further margin, we are unable to take the view that Sahib Singh was, not at least 18 years' old on 16-3-1989, when he was medically examined. In fact, the data, particularly fusion of the iliac crests and the clavicle, does indicate his age to be at least 19 years if not more on 18-3-1989. This conclusion is reached even without placing reliance on the testimony of H. J. Solomon, according to whom the date of birth of Sahib Singh, recorded in his school, was 12-2-1968 as against 1-1-1973, recorded in the other school, which is relied on behalf of Sahib Singh. The tendency of many to have lesser age recorded in school is well-known and, therefore, the date of birth being recorded as 1-1-1973 in the other school, can be easily appreciated out cannot be

accepted, because the same is clearly in conflict with the medical evidence. In this state of evidence, there was no justification for the High Court to have interfered with the concurrent finding of the Metropolitan Magistrate and the Additional Sessions Judge, that the age of Sahib Singh on 26-7-1988, the date of offence, was above 16 years on account of which he was not a juvenile.

8. Consequently, the appeal is allowed. The impugned order of the High Court, dated 10-8-1990 is set aside and that of the Metropolitan Magistrate and the Additional Sessions Judge, holding that respondent No. 1, Sahib Singh was not a juvenile, being above the age of 16 years on 26-7-1988, the date of the incident, is restored. The bail application of Sahib Singh will be disposed of accordingly and the trial of Sahib Singh will proceed with him to be an adult and not a juvenile. Sahib Singh is reported to be on bail. He should appear before the District & Sessions Judge, Delhi on or before March 25, 1991 for further orders on the question of bail.

Appeal allowed.

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