

Rajan Sinha

Vs

State of Bihar and Another

Criminal Appeal No. 174 of 1991

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II JJ)

12.03.1991

ORDER

1. Special leave granted.

2. We have counsel for both sides. The shorts question which we are required to considered is regarding the date of birth of respondent 2, Shiv Prakash Sharma. According to him, on the date of occurrence, i.e. December 21, 1980, he was under 16 years of age, his birth date being October 22, 1965 and not October 22, 1963 as recorded in the School Register. The learned Additional Sessions Judge came to the conclusion that his birth date as October 22, 1963 and not 1965 and he was therefore, above 16 years of age on the date of the incident. The High Court, however reversed the order of the Sessions Court holding that the entry in the School Register regarding the birth date of Shiv Prakash Sharma could not be considered as evidence regarding the correct date of birth. We find it difficult to accept this conclusion reached by the High Court. The Head Master of the school, DW 2, Umesh Narayan Singh stated in his evidence that Shiv Prakash Sharma was admitted to the school on January 12, 1972 in the sixth standard and his birth date was recorded as October 22, 1963. Even though one may assume that the Head Master of the school could have no personal knowledge regarding the correct date of birth of the student, the conclusion is inescapable that the student was admitted to the sixth standard on January 12, 1972. Insofar as that part of the evidence is concerned, it is clearly based on personal knowledge of the Head Master because he himself had admitted the student to the sixth standard on January 12, 1972.

3. Mr Srinivasan, the learned advocate for the appellant, was therefore, right in pointing out that if correct date of birth was October 22, 1965 as alleged by Shiv Prakash Sharma it follows that on January 12, 1972 he could hardly have crossed the age of 6 years and it is impossible to believe that at that age he would be admitted to the sixth standard. That is a glaring fact which has escaped the attention of the High Court. It is, therefore, difficult to come to the conclusion that the correct date of birth of Shiv Prakash Sharma was October 22, 1965 as claimed by him. He cannot, therefore, be held to be below 16 years of age at the date of commission of the crime. In that view of the matter, we cannot allow the judgment of the High Court to stand.

4. In the result, we allow this appeal, set aside the judgment of the High Court and restore the judgment of the Sessions Court. Having regard to the passages of time, we do hope that the matter will receive prompt attention.

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