

SUPREME COURT OF INDIA

Santenu Mitra

Vs.

State of W.B.

(M Punchhi, S Ahmed and B Kirpal JJ.)

20.02.1998

ORDER

1. Leave granted. Heard learned counsel.

2. This appeal is by a young man, Santenu Mitra who faces a trial under Section 302 IPC before the Court of Session. When produced before the Court, he raised the plea that he was a child on the date of the commission of the offence, i.e., 19-2-1988, and thus was entitled to the protection of the Juvenile Justice Act, 1986. His plea did not find favour with the Court of Session which led him to approach the High Court in Criminal Revision No. 922 of 1988. Orders were passed directing the Magistrate to hold an inquiry under Section 8(1) of the Juvenile Justice Act, 1986 in order to ascertain as to whether the appellant was below 16 years of age on the date of the incident (i.e. 19-2-1988).

3. The learned Magistrate received evidence and examined some witnesses produced by either side. It was maintained by the prosecution that the date of birth of the appellant was 19-11-1971 and hence he was over 16 years of age on the date of the incident. On the other hand, the plea of the appellant was that his date of birth was 19-11-1972 and was thus below 16 years of age. The appellant strongly relied upon an entry made in the Register of Births and Deaths (Ex. 3) and the supportive evidence of a clerk of the Calcutta Municipal Corporation who had brought such register to the Court. The Court observed that even though the date of birth of the appellant as recorded in

the register was 19-11-1972, since the entry was made sometime between 14-8-1978 and 8-11-1978, it was not contemporaneous and thus not reliable. On that premise, other evidence of the appellant disclosing his date of birth likewise mentioned in his LIC policy and matriculate certificate were also rejected. On the other hand, evidence led by the prosecution with regard to the application form filled by the father of the appellant at the time of the latter's admission in school was held to predominate and thus the verdict on the question of age went against the appellant. The High Court on being approached again in revision rejected the plea of the appellant.

4. We are of the view that the High Court fell in error in not holding the appellant to be below 16 years of age on the date of the commission of the offence. It is nobody's case that the entry in the Register of Births and Deaths is not a genuine entry, even though it was recorded sometime between 14-8-1978 and 8-11-1978

pertaining to a date of birth of 19-11-1972. Once that entry was recorded by an official in performance of his duties, it cannot be doubted on the mere argument that it was not contemporaneous with the date of the suggested date of birth of the appellant. It cannot be forgotten that the occurrence took place much later, say 10 years. It could not have been expected on the date when the entry was made that the appellant would claim benefit thereof on the commission of some offence. That entry is not alone but added thereto is the LIC policy and the matriculation certificate likewise mentioning the date of birth of the appellant being 19-11-1972. On the basis of such overwhelming and unimpeachable evidence, the application form filled in by the appellant's father suggesting his date of birth as 19-11-1971 pales into insignificance. We, therefore, have no hesitation to upset the impugned order of the High Court declaring the appellant to be a juvenile within the meaning of the Juvenile Justice Act, 1986. The appeal is thus allowed. The trial be regulated accordingly.