

**SUPREME COURT OF INDIA**

Nutan Kumar Prabhat

Vs.

State of Bihar

(2011) 2 SCALE 0420

(G.S.Singhvi and Asok Kumar Ganguly, JJ.,)

31.01.2011

**JUDGEMENT**

1. Leave granted.

2. This Appeal is directed against the order of the learned single Judge of the Patna High Court whereby he dismissed the revision filed by the appellant under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act') and confirmed the order passed by Vth Additional Sessions Judge, Bettiah, West Champaran. The appellant is father of Pranab Prabhat alias Rishu, who is said to have been killed by respondent No.2 - Munnu Rai alias Vivek Kumar Rai. On 16.3.2007, the appellant filed first information report with the allegation that his son had been killed by respondent No.2. The latter surrendered on 2.5.2007 and claimed that he is a juvenile. With a view to ascertain the age of respondent No.2, a Medical Board was constituted under the Chairmanship of Civil Surgeon. The report of the Medical Board was placed before Juvenile Justice Board, Bettiah (for short, 'the JJ Board'). After considering the evidence produced by the parties, the JJ Board held that the date of birth of respondent No.2 entered in the school records was not reliable. The JJ Board then adverted to the report of the Medical Board and observed: "In this connection now only the aforesaid report of the medical board constituted under the chairmanship of Civil Surgeon, Bettiah is there which was constituted on the direction of the Juvenile Justice Board which is on record and which has been perused and examined. In this regard the medical board has estimated the age of the juvenile Munnu Rai to be 17-18 years. In this regard all the three members of the juvenile justice board have studied the physical features of juvenile Munnu Rai minutely. Seeing the report of the board and the physical features I come to the conclusion that the age of Juvenile Munnu Rai alias Vivek Kumar Rai is above 20 years and is not less....." The JJ Board concluded that respondent No.2 cannot be declared as juvenile under Section 49 of the Act and directed that he be transferred to Divisional Jail, Bettiah and produced before the Chief Judicial Magistrate, Bettiah.

3. RESPONDENT No.2 challenged the order of the JJ Board by filing an appeal under Section 52 of the Act. Vth Additional Sessions Judge, Bettiah, West Champaran District (hereinafter referred to as 'the appellate Court') agreed with the JJ Board that the entries in

the school record were not reliable but held that in view of the report of the Medical Board, his age should be treated as 17 to 18 years on the date of occurrence, i.e., 16.3.2007 and, as such, he cannot be tried in the regular Court. The revision filed by the appellant was dismissed by the learned single Judge, who agreed with the appellate Court that as per the report of the Medical Board, respondent No.2 is entitled to be treated as juvenile.;