

F.R.
2/2/10

IN THE GAUHATI HIGH COURT

**(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram & Arunachal Pradesh)**

ITANAGAR BENCH

Crl. Appeal No.03 (AP) of 2008

Sri Nabam Amas,
son of Sri Nabam Legia
Village-Kancbung,
District-Papumpare,
Arunachal Pradesh.

*...Accused-appellant
(in jail)*

Versus

The State of Arunachal Pradesh

...Respondent.

P R E S E N T
THE HON'BLE MR.JUSTICE I.A.ANSARI
THE HON'BLE MR.JUSTICE AC UPADHYAY

For the appellant :: Mr.K.Agarwal,
Mr.D.Majumdar,
Mr.D.K.Chomal,
Mr.D.Kakati , Advocates

For the respondent :: Mr.N.Lowang, PP, Arunachal
Pradesh.

Date of hearing :: 18.12.2009

Date of order :: 2/02/2010



ORDER

A.C.Upadhyay,J.

We have heard Mr.D.Majumdar, learned counsel for the appellant and Mr.N.Lowang, learned P.P., Arunachal Pradesh at length.

[2] This appeal is directed against the judgment and order dated 23.04.07 passed by the learned Addl. Sessions Judge, Fast Track Court (WZ), Yupia , in Session case No. 490(FTC) of 2006, Yupia, convicting the present appellant for the commission of the offences punishable u/s 302/376/201 of the I. P. C.

Learned counsel for the appellant, during the last leg of his arguments , pointed out that the accused/appellant, who has been convicted as aforesaid , was a juvenile at the time of commission of the offence.

[3] By referring to the provisions of Section 7A of the Juvenile Justice (Care & Protection of Children) Act 2000, (herein after 'Act of 2000'), learned counsel for the accused/appellant drew the attention of this Court to a few very relevant material on record relating to minority in age of the accused /appellant and submitted that the question of juvenility can be raised and/or claimed at any stage of a criminal case, on behalf of the accused/appellant, even for the first time before the High Court.

[4] In order to appreciate the submissions of learned counsel on the issue of juvenility, it would be



useful to reproduce Section 7-A of the Act of 2000, which reads as under-

"S.7A. Procedure to be followed when claim of juvenility is raised before any court. - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

[5] Proviso to sub-section (1) of section 7-A lays down that the claim of juvenility may be raised before any court, at any stage, even at the appellate stage after disposal of the case. However, such claim shall be determined in terms of the provisions contained in this Act and Rules made there under, even if the juvenile has ceased to be so on or before the date of commencement



of this Act. When the materials placed before the Court on behalf of the accused, prima facie suggests that the accused was juvenile as defined in the Act of 2000, on the date of incident, it would become necessary to call for the report or make an inquiry to that effect.

[6] In this context, Hon'ble Supreme Court in **Pawan & Ors Vs State of Uttaranchal: 2009 3 SCR 468** held that the claim of juvenility for the first time even before the Supreme Court may be entertained but the judicial conscience of the court must be satisfied by placing adequate and satisfactory material that the accused had not attained age of eighteen years on the date of commission of offence; sans such material any further enquiry into juvenility would be unnecessary.

The relevant extract of Pawan and others (supra) reads as follows:

36. A benefit of Act, 2000 was sought for the first time by claiming juvenility before this Court in the case of Murari Thakur and Another v. State of Bihar, AIR 2007 S.C. 1129 but negated. This Court said:

"Learned counsel for the appellant firstly submitted that the appellants are entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the amendment of 2006. We are of the opinion that this point cannot be raised at this stage because neither was it taken before the Trial Court nor before the High Court. Even otherwise we do not find any merit in the said contention. The question of age of the accused appellants is a question of fact on which evidence, cross-examination, etc. is

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required and, therefore, it cannot be allowed to be taken up at this late stage. Hence, we reject this submission of the learned counsel for the appellant."

37. The question is : should an enquiry be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court. Where the materials placed before this Court by the accused, prima facie, suggest that the accused was 'juvenile' as defined in the Act, 2000 on the date of incident, it may be necessary to call for the report or an enquiry be ordered to be made. However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, we do not think any further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this court, the judicial conscience of the court must be satisfied by placing adequate and satisfactory material that the accused had not attained age of eighteen years on the date of commission of offence; sans such material any further enquiry into juvenility would be unnecessary.

[7] Upon going through the scheme of the Act of 2000 and more particularly Section 2(k), it appears that the definition of 'juvenile or child' has been expanded by increasing the age of juvenility from 16 years to 18 years. Section 7-A(1) of the Act of 2000 , provides for the procedure to be followed when the claim of juvenility is raised before any court . If the court finds a person to be juvenile on the day of commission of offence, it shall forward the juvenile to the Board for passing appropriate

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order and the sentence if any passed by a court shall be deemed to have no effect.

[8] Thus it transpires that in terms of the provision of section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, as per clause (1), whenever a claim of juvenility is raised before any Court, the Court shall make an inquiry and take such evidence as may be necessary so as to determine the age of such person. The Court shall also record a finding whether the person is a juvenile or a child or not stating his precise age as nearly as possible.

Learned counsel has also drawn our attention to Section 20 of the Act of 2000, which deals with the pending cases of those persons who are covered by the definition of juvenile and submitted that because of the definition of juvenile under Section 2(1) read with the provision of Section 20 of the Act 2000, the order of sentence awarding life imprisonment to the accused/appellant was uncalled for.

[9] Section 20 of the Act of 2000 provides for the special provision to be followed in respect of pending cases pertaining to the juveniles in any court in any area on the date on which the Act comes into force in that area. It provides that such pending cases against the juvenile shall continue in the said courts as if this Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of juvenile, forward the Juvenile to the Board, which shall pass

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appropriate orders in respect of that juvenile in accordance with the provisions of the Act.

[10] Conjoint reading of clause 2 of Section 7-A and Section 20 of the Act of 2000, reveals that if the Court finds a person to be juvenile in terms of definition under Section 2(k) of the Act of 2000 on the date of commission of offence, it shall forward the juvenile to the Juvenile Justice Board for passing appropriate orders, and the sentence if any, awarded by a Court shall be deemed to have no effect. The import of this provision is that sentence awarded by the learned trial Judge in terms of the impugned order of sentence will have no effect and the matter has to be referred to the Juvenile Justice Board for passing appropriate orders. We may, however, note that as per Section 15 of the Act of 2000, the maximum period for which a juvenile can be sent to a Special Home is three years .

[11] It has been pointed out that in the remand report, the accused / appellants age was shown to be 18 years. Over and above, the appellant in his statement under section 313 Cr.P.C. and in his confessional statement recorded u/s 164 Cr. PC categorically stated that he was a juvenile below the age of 16 years at the time of the commission of the alleged crime. Learned counsel for the appellant also appraised us about existence of a birth certificate of the appellant which revealed his juvenility . Apparently, the trial Court did not consider any aspects of the matter, such as the age of the accused/appellant on the date of commencement of

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the trial or the date of occurrence of the offence, for the purpose of determining the juvenility . However, the learned Court below wholly relied on the conjecture in the evidence laid by P.W.3, without making any effort to determine the age of the accused on the date of occurrence. The trial Court, without making any kind of inquiry as prescribe in the statute, made an observation in the judgment that the age of the appellant has been authentically proved to be more than 18 years and accordingly rejected the plea of juvenility of the appellant.

[12] As soon as question of juvenility is raised, in respect of an accused in a criminal case , the Act of 2000 requires the Magistrate before whom such accused is produced to take immediate measure to determine the age of such accused. Supplementing the requirement of the law Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter Rules of 2007) calls for the trial Court or the Board, as the case may be, to determine the age of a juvenile in conflict with the law within 30 days from the date of making an application for such purpose. The rule requires the Court or the Board to determine the age of the alleged juvenile based on evidence referred to in sub-rule (3) of the rule 12. In the present case, apparently, the trial Court did not follow the mandate of the law, before proceeding with the trial of the case .

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rule 2007 provides the procedure to be followed in determining the age of child or a juvenile; which reads as follows:



"12. Procedure to be followed in determination of age.-

-(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) .The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile of the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining--

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit

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to the child or juvenile by considering his/her age on lower side within the margin of one year,

And while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding regarding the age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the 8 conclusive proof specified in sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7-A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

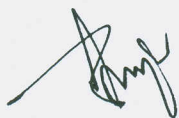
[13] It is clear from the provisions of the rule 12 aforesaid, more particularly sub-rule (3) of the rule that the age determination inquiry shall be conducted by the



Court on the basis of matriculation or equivalent certificates, and in the absence whereof, the date of birth certificate from the school first attended; and in the absence whereof, the birth certificate given by a corporation or municipal authority or a panchayat, in that behalf. Only when the aforesaid certificates are not available, the trial Court has to decide on the basis of medical opinion from a duly constituted Medical Board. The rule further makes it clear that where it is not possible for the Court to exactly assess the age, the Court is bound to give the benefit of doubt to the child or the juvenile by considering his age to be on the lower side within the margin of one year. In any case, it is unavoidable on the Court to record a finding based on section 7 and 7A of the Act of 2000 and rule 12 of the Rules. Sub-rule (3) of rule 12 states that while passing orders in such a case, the Court shall record a finding in respect of the age of the juvenile which is then treated as conclusive proof of the age as regards such child.

[14] From the impugned judgment and order appealed against, it appears that the only finding recorded by the learned trial Court is in paragraph 9 of the judgment, wherein it has been observed as follows:-

".....though the accused pleaded to consider him and not punished and also taking into consideration the submissions of the learned defence counsel pleading the accused to be a minor but the learned defence counsel failed to produce any documents to prove his contentions that the accused is a minor. In the contrary P.W.3. testified in cross-examination that the accused is 18 years of age as he has known the accused since childhood"



[15] In the confessional statement the accused stated his age to be sixteen years. Apparently immediately after having recorded the confessional statement an inquiry U/S 7A of the Act of 2000 should have been carried out by the learned Court below to ascertain the juvenility of the accused/appellant. The Judicial Magistrate 1st Class, Itanagar, who was entrusted to record the confessional statement, if not anything more, ought to have reflected such revelation, made by the accused/appellant about his juvenility, in the order sheet of the case record, in order to trigger an inquiry U/S 7A of the Act of 2000. The learned Court below did not rise to the occasion in terms of the provision of Section 7A, when a claim of juvenility was made by the accused/appellant himself in his confessional statement. The accused/appellant, who was a young tribal boy lodged in jail since the date of arrest cannot be expected to formally apply by filing a petition claiming his juvenility. Therefore, a duty was cast on the part of the concerned courts to carry out an inquiry to ascertain the juvenility of the accused/appellant, immediately when question such question of juvenility was raised .

[16] As a matter of fact, when the issue of juvenility is taken up for decision, the trial Court must decide it on the basis of evidence, in the same order in which it is referred to in sub-rule (3) of Rule 12 and determine the age conclusively. The Court has completely ignored the requirement of rule 12 of the Rules of 2007. The learned trial Court in the instant case without holding any inquiry in terms of the provision of the Act of 2000 opined that the juvenility has not been authentically proved. Thus, it has resulted in defeating the purpose of



the Act, which was enacted to consolidate the law relating to juvenile in conflict with law. The Act of 2000 has been enacted for the children in need of care and protection by providing them proper care, protection and treatment, by catering to their developmental needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their ultimate rehabilitation. This law has been enacted, inter alia, in discharge of the primary responsibility of the State for ensuring that all needs of the children are met and their basic human rights are fully protected as envisaged under clause (3) of Article 15, clauses (e) and (f) of Article 39 and Articles 45 and 47 of the Constitution of India and as prescribed by the Convention on the Rights of the Child adopted by the General Assembly of the United Nations and ratified by the Government of India.

[17] If a person is found to be a juvenile at the time of commission of offence, the Court is bound to ensure that the trial is held in accordance with the provision of the Act of 2000. This would not obviously be possible if the trial Court fails to determine the age of the juvenile, when it was raised before it. It is not permissible for the trial court to reject and/or refuse to inquire into the juvenility without sufficient reasons or because the prosecution has disputed the age of the accused. The trial Court is duty bound in law to exhaust the modes of determining the age provided by the Act of 2000 and Rules framed there under and render a clear finding about the age of the accused. This not having been done, even



at the appellate stage, the mandate of the law would continue to haunt the appellate Court and beyond.

[18] A delinquent child, even if found guilty of any offence, cannot be sent to jail, neither can he be kept in custody nor in police station before being produced in the Juvenile Court. The benefits of the provisions of the Act of 2000 are available to a juvenile only, i.e., a boy or a girl who has not attained the age of 18 years on the day of occurrence. Since juveniles have been given a special status as a class, therefore, the age of the accused on the day of occurrence assumes great importance. Section 7A and Rule 12 of the Rules of 2007, extracted earlier together with other related scheme in the Act, provides the procedure of an inquiry to be made to determine the juvenility of the accused.

[19] In terms of the provision of Section 2(y) all words and expression not defined in the Act of 2000 and defined in the Code of Criminal Procedure, 1973, shall have the meanings respectively assigned to them in that Code. The court is required to record a finding on the basis of evidence and material before it by carrying out an inquiry to ascertain as to whether the accused was a juvenile or not at the time of occurrence. Undoubtedly, scheme of law provided under the Act of 2000 and the Rules framed there under, call for determination of age of a juvenile in conflict with law only by holding an inquiry. Obviously, while holding such inquiry respective parties are required to be given adequate opportunity to lead oral



evidence followed by right of cross-examination of the witnesses of the opposite party.

[20] . It appears from materials on record that the learned Court below did not initiate any effort, whatsoever, to ascertain the juvenility of the accused/appellant before proceeding with the trial of the case in spite of having sufficient materials . The Police Officer, conducting the investigation of the case, did not ever raise the issue of juvenility of the accused. Therefore, after giving thoughtful consideration on the entire gamut of facts discussed above and in view of the claim of juvenility raised on behalf of the convicted accused/appellant, we deem it to be apposite to consider and decide the question, before we proceed to hear and dispose of this appeal. Therefore, we are of opinion that an inquiry is required to be made by this court in terms of the provisions of Sec.7A of the Act of 2000 and the rules made there under, without any further delay .

[21] Therefore, learned counsel for the appellant is directed to take appropriate steps to enable this Court to proceed with the inquiry relating to juvenility of the accused/appellant in terms of the provisions of the Act of 2000.

[22] Learned counsel for the appellant as well as learned Public prosecutor have consented to take all suitable steps to summon all such material witnesses and produce all necessary document, which would be relevant for the purpose of adjudication of the issue relating to the age of the accused/appellant at the time of occurrence .



[23] In the mean time we also direct that the accused/appellant be examined by the Medical Board headed by the District Medical Officer, Papumpare, Itanagar, in order to ascertain his present age. All necessary tests including ossification test for the aforesaid purpose may also be carried out by the Radiologist of the General Hospital, Naharlagun, under the supervision of the District Medical Officer, Papumpare. All such medical reports as aforesaid shall be submitted before this court in a sealed cover. The Registry is directed to take appropriate action urgently to obtain the reports aforesaid .

[24] The Registry shall take all necessary steps to summon the witnesses and/ or to procure documents as offered by the learned counsel for the parties, in connection with the inquiry aforesaid ordered by this Court ,by fixing the date of inquiry on 23/03/2010 ,before any available Division Bench. However, on the date fixed for inquiry ,the accused/appellant also shall be directed to be produced in the Court. Inform the Superintendent Central Jail, Itanagar to take all necessary steps to produce the accused/appellant on the date fixed for inquiry.

Let this criminal appeal be listed only after the inquiry in this regard is complete.

List the matter before any available Division Bench on 23/03/10.


JUDGE

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JUDGE