

(2015) 02 CAL CK 0044
In the Calcutta High Court
Case No : WP 18352 (W) of 2014

Bijoy Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 15(3)(e), 45, 47
Criminal Procedure Code, 1973 (CrPC) — Section 439
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 16, 16(2)
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302, 307

Citation : (2015) 4 CCR 129 : (2015) CriLJ 3195 : (2015) 4 RCR(Criminal) 401

Hon'ble Judges : Sahidullah Munshi, J.; Indira Banerjee, J.

Bench : Division Bench

Advocate : Kishore Dutta and Biswajit Manna, for the Appellant; Manjit Singh, Public Prosecutor and Pawan Kumar Gupta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Indira Banerjee, J.—This writ petition filed by the petitioners is directed against the illegal detention of their respective sons, Swapan Roy and Raju Roy being juveniles in conflict with the law.

2. The petitioner No. 1, Bijoy Roy is the father of Swapan Roy, born on 14th June, 1994 and the petitioner No. 2, Bablu Roy is the father of Raju Roy, born on 21st March, 1994.

3. Pursuant to a written complaint lodged by one Ranjit Patra, son of Gouranga Patra, Lalgah Police Station Case No. 4/2011 dated 7th January, 2011 was initiated against the petitioners under Section 148, 149, 326, 307 and 302 of the Indian Penal Code, read with Sections 25 and 27 of the Arms Act. Pursuant to an order dated 18th February, 2011, passed by this Court, the Central Bureau of Investigation took over the investigation of the case.

4. On 13th March, 2011 the said Swapan Roy and Raju Roy were arrested by the

Central Bureau of Investigation, in connection with the aforesaid case, and were produced before the Court of the learned Additional Chief Judicial Magistrate, Jhargram on 14th March, 2011.

5. On or about 24th April, 2011 the Central Bureau of Investigation submitted its Charge sheet against the respective sons of the petitioners, Swapan Roy and Raju Roy, and eighteen others, charging them with offence under Sections 120B, 148, 149, 326, 307, 302 and 374 of the Indian Penal Code read with Sections 25 and 27 of the Arms Act. The case was later transferred to the Court of the learned Additional Sessions Judge, re-designated Court, Paschim Midnapore.

6. The said Swapan Roy and Raju Roy filed applications for bail in this Court under Section 439 of the Code of Criminal Procedure, inter alia contending that they were less than eighteen years of age on the date of the alleged offence and, therefore, juvenile.

7. As enshrined in Article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. Every infant that is born, is equal and has the basic human right to be brought up with love, affection, adequate care, adequate nutrition and the basic necessities of a decent standard of life. As the infant grows into a child, the process of education begins, first at home and then at school. Some children are fortunate to be born in enlightened, educated families and to be able to go to the best institutions in the country, but not all.

8. All children are born innocent. It is the environment in which they grow up that moulds their tender minds. The behavioral pattern of a child depends on various factors, such as, the love and affection that the child gets, the atmosphere at home, the surroundings in which the child is brought up, the education the child gets, the influence of family, friends, teachers and others.

9. Delinquency amongst children is often the result of neglect, deprivation, improper upbringing bereft of love and affection, unhealthy surroundings, the bad influence of adults, peer pressure, want and poverty. In fact in the instant case itself, charge sheet has been issued against eighteen other co accused persons.

10. Frustration, anger, defiance of authority, obduracy and obstinacy in children are the manifestations of deprivation, emotional as well as material. Delinquent acts are also prompted by a craving for attention. Furthermore, deprived children often become pawns in the hands of scheming adults, anti socials and criminals who use them for their own selfish ends.

11. With adequate love and care, nutrition, good company and good education, the personality of a child blossoms and the child is able to excel in different spheres of life.

12. The primary responsibility of bringing up children, providing them with care, support and protection is that of the family, particularly biological parents.

However, absence of parental support and/or family support to thousands of children and inability and/or failure of the parents and/or family to discharge their primary responsibility towards children is a cause of immense concern to the society at large.

13. Errant children can be rectified with love, affection, proper care, proper guidance and some disciplining. Juveniles and/or children in conflict with the law, therefore, need to be reformed and not punished. An immature aberration should not become a handicap for life. We must try to heal wounds which are the result, directly or indirectly, of societal shortcomings, and not allow the wound to develop into gangrene that might cause permanent disability. There have, therefore, been deliberations and discussions at various levels in relation to the rights and interests of children, including errant children in conflict with law.

14. On 20th November, 1989, the General Assembly of the United Nations adopted the Convention on the Rights of the Children, wherein a set of standards have been prescribed to secure the best interests of the child.

15. The convention has emphasized social reintegration of children in conflict with the law, to the extent possible, without resorting to judicial proceedings. The Government of India having ratified the convention, enacted the Juvenile Justice (Care and Protection of Children), Act 2000 with the view to codify the standards prescribed by the convention, in furtherance of the provisions of Articles 15(3)(e) and (f) and also Articles 45 and 47 of the Constitution.

16. The said Act provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and also for matters relating to justice of delinquent juveniles.

17. The justice system as available for adults is unsuitable for being applied to a juvenile or to a child. It was, thus, decided to lay down the basic principles for administering justice to a juvenile or a child, to create a juvenile system, meant for a juvenile or a child, more appreciative of the developmental needs of a juvenile or a child, in comparison to criminal justice system as applicable to adults, to bring the juvenile law in conformity with the United Nations Convention, on the rights of the child and to prescribe a uniform age of 18 years for both boys and girls. One of the principles behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2006 is to minimize the stigma in keeping with the developmental needs of the juvenile or child.

18. Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000 provide as follows:--

"15. Order that may be passed regarding juvenile.--(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it so thinks fit, -

(a) allow the juvenile to go home after advice or admonition following

appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

[(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit]

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise , and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein , and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home. (4) The board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith

furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer."

16. Order that may not be passed against juvenile.--(1) Notwithstanding anything to the contrary contained in any other law for the time being in force , no juvenile in conflict with law shall be sentenced to death [or imprisonment for any term which may extend to imprisonment for life], or committed to prison default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. (2) On receipt of a report from Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act." 19. Pursuant to orders passed by this Court, in the application under Section 439 of the Code of Criminal Procedure, the Additional Sessions Judge, re-designated Court, Paschim Midnapore conducted an enquiry into the age of Swapan Roy and Raju Roy, in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

20. By an order dated 6th June, 2013, the Additional Sessions Judge, Re-designated Court, Paschim Midnapore held that Raju Roy, son of the petitioner No. 2 was a juvenile in conflict with law. The claim of Swapan Roy, son of the petitioner No. 1, to juvenility was rejected.

21. Swapan Roy filed a Criminal Revisional application being C.R.R 2107/2013 in this Court challenging the decision of the Additional Sessions Judge, re-designated Court, Paschim Midnapore rejecting the claim of Swapan Roy to juvenility.

22. By an order dated 26th July, 2013 passed in C.R.R 2107/2013, this Court directed the Additional Sessions Judge, re-designated Court, Paschim Midnapore to conduct further enquiry into the claim of Swapan Roy to juvenility.

23. By an order dated 30th September, 2013, the learned Additional Sessions Judge, Re-designated Court, Paschim Midnapore again rejected the claim of Swapan Roy, son of the petitioner No. 1 to juvenility.

24. The order dated 30th September, 2013 was challenged in this Court by filing a Criminal Revisional Application No. 3741/2013. By an order dated 11th December, 2013, this Court found that Swapan Roy, son of the petitioner No. 1 was also a juvenile in conflict with law. The cases of both Swapan Roy and Raju Roy were sent to the Juvenile Justice Board, Paschim Midnapore.

25. On 28th April, 2014 the said Swapan Roy and Raju Roy prayed for bail under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 before the Juvenile Justice Board, Paschim Midnapore, contending that they had been in custody for over 3 years, that is, the maximum period for which they could be sentenced under the Juvenile Justice (Care and Protection of Children) Act, 2000. The prayer was however turned down.

26. Mr. Kishore Dutta, appearing on behalf of the petitioners submitted, and rightly, that Swapan Roy and Raju Roy being juveniles in conflict with law, they cannot be kept in custody for more than 3 years i.e., beyond the maximum period for which they can be sentenced under the Juvenile Justice (Care and Protection of Children) Act, 2000.

27. In view of Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, and in particular, the proviso to Section 16(2) there can be no question of detention of a juvenile beyond the maximum period provided under Section 15 the said Act, that is, three years. As the respective sons of the two petitioners have already suffered detention for 3 years, the writ petition is disposed of by directing their immediate release.

Sahidullah Munshi, J.

28. I Agree.