
(2020) 10 JH CK 0030
In the Jharkhand High Court
Case No : Criminal Revision No. 48 Of 2014

Javed Hussain @ Md. Jawed Hussain And Ors	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Juvenile Justice (Care And Protection Of Children) Act, 2000 — Section 15, 15(1)(g)
Constitution Of India, 1950 — Article 19

Citation : (2020) 10 JH CK 0030

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Avishek Prasad, Azeemuddin

Final Decision : Dismissed

Judgement

1. Heard Mr. Avishek Prasad, the learned counsel appearing for the petitioners.
2. Heard Mr. Azeemuddin, the learned A.P.P. appearing on behalf of the Opposite Party-State.
3. The present criminal revision application is directed against the judgment dated 20.04.2013 passed by the learned Principal Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 181 of 2011 whereby and whereunder the learned appellate court has confirmed and maintained the Inquiry Order passed by the learned Juvenile Justice Board, East Singhbhum, Jamshedpur and has dismissed the appeal preferred by the petitioners.
4. The petitioners had preferred the criminal appeal before the learned lower appellate court against the Inquiry Order dated 21.10.2011 passed by the learned Juvenile Justice Board, East Singhbhum, Jamshedpur in G.R. Case No.920/2006 / T.R. No. 277/2011 (arising out of Sakchi P.S. Case No. 71/2006 registered under Sections 302/34 of the Indian Penal Code) whereby and whereunder the petitioners were found guilty for the offence under Sections

302/34 of the Indian Penal Code (hereinafter referred to as 'IPC') and were directed to be sent to Special Home for a period of one year within the purview of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Arguments on behalf of the petitioners

5. The learned counsel for the petitioners submitted that the petitioners were convicted under Sections 302/34 of the Indian Penal Code, but neither the Investigating Officer, nor the doctor has been examined and the post-mortem report of the deceased has also not been exhibited in the instant case and accordingly, the cause of death of the deceased was not proved before the learned Juvenile Justice Board. He further submitted that two prosecution witnesses were also declared hostile. Accordingly, the impugned Judgment passed by the learned appellate court and the Inquiry order passed by the learned Juvenile Justice Board, East Singhbhum, Jamshedpur are fit to be set aside. He relied upon the judgment passed by this Court in the case of *Sowan Kisku -versus- The State of Bihar (now Jharkhand)* as reported in 2006 Cr.L.J. 2526 and submitted that in the said case also, the cause of death was not proved and therefore, the conviction under Section 302 of the Indian Penal Code was not sustained.

6. He further relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Mumtaz @ Muntyaz - versus- State of U.P. (Now Uttarakhand)* as reported in AIR 2016 SC 3151 (Para-25) and also upon the judgment passed by the Hon'ble Supreme Court in the case of *Jitendra Singh @ Babboo Singh and Another -versus- State of Uttar Pradesh* as reported in (2013) 11 SCC 193 (Paras-54 and 68 to 71) and submitted that as of now, the petitioners are no longer juveniles and accordingly, they may be released. He further submitted that the petitioners have already remained in Special Home for about six months and 10 days out of total one-year punishment awarded to them by the learned Juvenile Justice Board, East Singhbhum, Jamshedpur. The present age of the petitioner no. 1 and 2 is 29 years 30 years respectively.

Arguments on behalf of the Opposite Party-State

7. Learned counsel appearing on behalf of the Opposite Party- State opposed the prayer and submitted that concurrent finding of facts has been recorded by the learned Juvenile Justice Board and the learned appellate court and accordingly, no interference is called for by this Court in revisional jurisdiction. He further submitted that non-examination of the Investigating Officer and doctor is not fatal to the prosecution case, in as much as PW-2 and PW-4 are the eye witnesses to the occurrence who have fully supported the prosecution case that the petitioners were armed with Bhujali and Gupti and the deceased had received the injuries from these two weapons on vital part of the body including chest and both these witnesses had taken the victim to hospital who ultimately succumbed to the injuries. He further submitted that considering the evidence of the eye-witnesses, the fact that the post-mortem report was not exhibited is also not

fatal to the prosecution case.

8. Learned counsel for the Opposite Party-State further submitted that since the conviction in the present case is under Section 302/34 of the Indian Penal Code, the order of detention should have been for three years, but the learned Juvenile Justice Board has taken a lenient view and has inflicted order of detention for one year only to the petitioners. However, during the course of argument, he did not dispute the fact that the petitioners have remained in Special Home for a period of more than six months as submitted by the learned counsel for the petitioners.

Findings of this Court

9. After hearing the counsel for the parties and going through the records of the case, this Court finds that the prosecution case is based on the fardbeyan of the Informant namely, Mukesh Mishra @ Pintu Mishra recorded by A.S.I. Lakhan Ram of Sakchi P.S. on 18.04.2006 at M.G.M. Emergency Ward alleging interalia that the Informant alongwith his brother Binod Kr. Mishra @ Muna Mishra had gone on foot for giving order for workers on the occasion of marriage of his sister and when they reached near the peepal tree in Purulia Bus Stand at Kalimati Road, Sakchi, Pervej armed with Bhujali, Imteyaz armed with Bhujali and Javed armed with Gupti alongwith three other persons came there abusing. On seeing them, the informant and his brother started running, but the accused chased and caught hold them and thrashed them on the road. However, the Informant anyhow saved his life and ran away from there and stopped after some distance and saw that Pervej, Imteyaz, Javed and unknown persons assaulted his brother by means of weapons in their hands and fled away from there. Thereafter, the Informant reached near his brother and saw that he has sustained serious injuries in his left leg, left side of waist, etc. and then, he took his brother to M.G.M. Hospital Emergency Ward where he succumbed to his injuries. The Informant further mentioned the reason behind the occurrence that on 16.04.2006, an altercation had taken place between his brother Binod Mishra and Pervej, Imteyaz and Javed and they had threatened his brother for dire consequences. It is further mentioned that the deceased Binod Mishra had told him about that on the way to Hospital.

10. On the basis of the fardbeyan, the case was registered as Sakchi P.S. Case No.71/2006 under Sections 302/34 of Indian Penal Code against the petitioners and others and after completion of investigation, the Investigating Officer submitted charge-sheet against them and on the basis of the materials on record, cognizance of the offence under the aforesaid sections were taken in the case. After declaration of the petitioners as juveniles, the case record of the petitioners was sent to the Juvenile Justice Board. The substance of accusation for the offences under Sections 302/34 of the Indian Penal Code was explained to the petitioners in Hindi to which they pleaded not guilty and claimed to be tried.

11. This Court finds further that the prosecution examined altogether six witnesses. PW-1 is Sri Bhagwan Thakur, PW-2 is Mukesh Kr. Mishra who is the Informant of the case, PW-3 is Manoj Agarwal, PW-4 is Shashi Kant Mishra, PW-5 is Babua Singh and PW-6 is Pramod Kumar Mishra.

12. The learned Juvenile Justice Board has discussed and examined the evidences on record and summarized its findings in Para-16 as under:

"16. Considering the evidences available on record, it appears that the P.W.-2 Mukesh Kr. Mishra is the informant as well as eye witness of this case. He has supported the case of the prosecution on the point of date, time, manner, place and factum of occurrence. He has stated that on allged date & time of occurrence, he alongwith his brother Binod Kr. Mishra were going when he reached near Old Purulia Bus Stand, then the above-named Juveniles alongwith others came there by abusing and caught hold them. However, he escaped himself and ran away, but his brother not succeeded to escape and he saw from some distance that the above-named Juveniles alongwith others assaulted his brother by means of Bhujali and Gupti due to which his brother seriously injured. Thereafter, the above-named Juveniles and others have been fled away. Then, he reached near his brother and found that he was fully stained with blood and sustained injuries on chest, back and hand. Thereafter, he has taken away his brother to M.G.M. Hospital and on the way, his brother told him that two days earlier, above named Juveniles and others have threatened him for dire consequences and later on, his brother succumbed to his injuries. The said witness has proved fardbeyan which has been marked as Ext.-1. He has also identified the above-named Juveniles. The rest witness i.e. P.W.-4 hashi Kant Mishra and P.W.-6 Pramod Kr. Mishra are the brothers of informant and they have also supported the factum of prosecution case and corroborated the evidence of P.W.-2 by stating that on alleged date, time of occurrence, the above named Juveniles have assaulted Binod Kumar Mishra by Bhujali and Gupti due to which he sustained injuries and later on, succumbed to his injuries. P.W.-3 Manoj Agarwal has stated that he heard that some altercation arose between Imteyaz, Javed and Munna and later on, he came to know that Mishra has been murdered. Thus, the factum of murder of deceased Binod Kr. Mishra has also been admitted by the said witness."

13. This Court further finds that after considering arguments of the learned counsel for the parties, the learned Juvenile Justice Board held that from perusal of the evidence and other material on record, if some discrepancies are ignored, then it can be surely said that prosecution has been able to prove this case against the above named Juveniles in conflict with law beyond the shadow of all reasonable doubt. The learned Juvenile Justice Board held the petitioners guilty for the offence under Section 302/34 of Indian Penal Code.

14. This Court further finds that while considering the period of detention, the learned Juvenile Justice Board considered the tender age of the petitioners and absence of previous conviction and directed the Juveniles to be sent to Special

Home for a period of one year within the purview of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

15. The learned appellate court again considered the evidences and materials on record and also considered the arguments advanced on behalf of the parties and recorded its findings in Para-10 of its Judgment as under:

"10. After carefully considering the evidence of the witnesses and the material which are available on record, I find that P.W.-2 and P.W.-4 both these witnesses have fully supported the case of the prosecution and they are the eye witnesses of the occurrence. They have said with regard to the committing of the offence by these appellants including other accused persons. They have said with regard to the weapons carrying by these appellants and also that they badly assaulted the deceased who succumbed to his injuries during treatment. In cross-examination, both these witnesses are stick over their statement which they have said in their examination-in-chief. Defence has failed to bring any contradiction during course of cross-examination of these witnesses to creat any reasonable doubts upon their testimony. Although P.W.-1 and P.W.-5 have been declared hostile and P.W.-3 and P.W.-6 appears to be hearsay witnesses, but from the evidence of these witnesses, it is apparently clear that offence was committed in which deceased was badly assaulted who succumbed to his injuries during course of treatment."

16. The learned appellate court found itself in agreement with the findings of the learned Board and held that the prosecution has well proved the allegation against the appellants (petitioners herein) beyond all shadow of reasonable doubt and confirmed and maintained the enquiry order of conviction passed by the learned Juvenile Justice Board.

17. This court finds that the judgment relied upon by the petitioners which is reported in 2006 CRI. L.J. 2526 (Sowam Kisku and Others vs. The State of Bihar) does not apply to the facts and circumstances of this case. In the said case the victim and P.W. 1 were surrounded and attacked by the accused with weapons in their hand and the P.W. 1 managed to escape but the victim suffered injuries and died on the spot. In that case the prosecution relied upon the post mortem certificate issued by the Doctor and was exhibited by the compounder attached to the hospital and the Doctor was not examined and therefore the contents of the post mortem certificate was not proved as it was exhibited only by the compounder who was not present when the post mortem was conducted and was also not present when the Doctor signed the post mortem certificate and he had no knowledge about the opinion expressed by the Doctor on the post mortem certificate. In this background this court in appellate jurisdiction was of the view that the court cannot draw the inference on the basis of other evidence that the victim must have died on account of injury suffered by him as there was no medical evidence to indicate that the victim had suffered injuries.

In the present case, this court finds that although the Doctor and the

Investigating Officer have not been examined and the post mortem report has not been brought on record but the two eye witnesses to the occurrence have clearly and consistently deposed that the petitioners were armed with Bhujali and Gupti and the petitioners had brutally assaulted the victim due to which he sustained injury on vital part of the body including chest and ultimately victim was immediately taken to the hospital and the victim expired due to injuries sustained by him. The learned courts below have given consistent findings and held the petitioners guilty of offence under section 302/34 of IPC and there is no scope of reappreciating the evidences on record and coming to a different finding. The intention of the petitioners to kill the victim of this case is apparent from the nature of weapons used, part of the body chosen for assault and other attending circumstances including the fact that the victim was immediately taken to the hospital but he succumbed to the injuries. This court finds that the case of the prosecution was duly proved by the prosecution beyond all reasonable doubts and there is consistent finding of the learned courts below on this point.

18. This Court finds that P.W.-2 is the Informant of the case and brother of the deceased and is an eye witness to the occurrence and he also accompanied the deceased to M.G.M. Hospital and remained with him till his death. He saw the injury of Gupti on the chest of the deceased and also the injury of Bhujali. He has stated that after seeing the accused persons, he will identify them. P.W.-4 is another brother of the deceased and this witness stated that at the time of the occurrence, he was coming from duty and he saw that his brother was attacked by the accused persons and he saw deadly weapons in the hands of the accused persons including the petitioners and after assaulting the deceased, the accused persons fled away. He further stated that on the tempo, he had asked the deceased regarding the occurrence and the deceased had told the names of the accused persons including the petitioners to this witness. This witness also accompanied the deceased to M.G.M. Hospital and remained with him till his death. This witness has identified the accused persons.

19. This Court is of the considered view that when ocular evidence is fully reliable and trustworthy, non-examination of the Investigating officer and the doctor and non-exhibiting the post- mortem report of the deceased are not fatal to the prosecution case.

20. This court does not find any illegality or perversity in the findings recorded by the learned courts below while convicting the petitioners, which are well reasoned judgements upon consideration of all the evidences on record and accordingly, no interference is called for in revisional jurisdiction.

21. This Court is of the considered view that the offence committed by the petitioners is a heinous offence and the Inquiry Order passed by the learned Juvenile Justice Board and the Judgment passed by the appellate court are well reasoned judgments having consistent findings and under such circumstances, no interference is called for under revisional jurisdiction.

22. The judgements relied upon by the petitioners i.e the case of Mumtaz @ Muntyaz -versus- State of U.P. (Now Uttarakhand) as reported in AIR 2016 SC 3151 (Para-25) and also upon the judgment passed by the Hon'ble Supreme Court in the case of Jitendra Singh @ Babboo Singh and Another -versus- State of Uttar Pradesh as reported in (2013) 11 SCC 193 do not apply to the facts and circumstances to the present case as in the said cases the issue was as to whether the petitioners were juvenile or not under the provisions of the prevalent law. In the present case, there is no dispute that the petitioners were juvenile on the date of occurrence. Accordingly, the said two judgements do not help the petitioners in any manner whatsoever.

23. In the case of "Salil Bali v. Union of India" reported in (2013) 7 SCC 705, para 63 it has been held that the essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into mainstream society. The Hon'ble Supreme Court also corrected the misunderstanding of the law relating to the sentencing of the juveniles, and considered the general understanding that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. The Hon'ble supreme court considered Section 15(1)(g), as it stood before and after the amendment came which into effect from 22-8-2006, and held that amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority. The essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into mainstream society. The age of eighteen has been fixed on account of the understanding of the experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and reintegrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.

24. It has been held by the Hon'ble Supreme Court in the case of Yakub Abdul Razak Memon that correctional treatment with a rehabilitative orientation may be an imperative of modern penology so far as the treatment of juvenile in conflict with law is concerned under the Juvenile Justice (Care and Protection of Children) Act, 2000. It has also been held that such values may find their roots under Article 19 of the Constitution which itself sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and

security of the State.

25. In view of the aforesaid facts and circumstances of the present case, though the petitioner is said to have remained in detention for a period of more than 6 months out of total detention period of one year and that the present age of the petitioner no. 1 and 2 is 29 years and 30 years respectively, this Court is of the considered view that reducing the punishment to the period already served by the petitioner will not serve the ends of justice. This court cannot lose sight of the manner in which the offence under section 302/34 of IPC has been committed by the petitioners.

26. This Court is of the considered view that one of the prime concerns of the juvenile justice system is to ensure that the delinquent juvenile is also prevented from reoffending. In fact, the punishment of disposition of one year itself is a part of process of reintegration of the petitioners with the society and for that purpose, the petitioners have to take responsibility of their act being illegal.

27. This Court finds that the learned Juvenile Justice Board has rightly exercised its jurisdiction while passing the order of disposition under the facts and circumstances of this case with particular reference to the nature of offence.

28. This Court finds that considering the nature of offence which is involved in the present case and the manner in which it has been committed, the petitioners do not deserve any modification of punishment in their favour. Although the petitioners have served more than half of the punishment imposed by Juvenile Justice Board, this Court is not inclined to take any sympathetic view and modify the order of detention of the petitioners.

29. This Court further finds that the learned Juvenile Justice Board has already taken lenient view and the petitioners were directed to be sent to Special Home for a period of one year only which has been maintained by the learned appellate court and therefore, this Court is not inclined to interfere with the period of detention of the petitioners.

30. Considering the aforesaid facts and circumstances of the case, the conviction of the petitioners under Section 302/34 of the Indian Penal Code is upheld and the period of their detention is maintained.

31. Accordingly, the present criminal revision petition is hereby dismissed.

32. Bail bond furnished by the petitioner is hereby cancelled.

33. Pending interlocutory application, if any, is dismissed as not pressed.

34. Let the Lower Court's Records be sent back to the learned Juvenile Justice Board/court concerned.

35. Let a copy of this order be communicated to the learned court below through "email/FAX".