
(2014) 04 GAU CK 0037
In the Gauhati High Court
Case No : Crl. Pet. 75 of 2012

Rajib Hussain

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401, 482
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 2, 2(1), 2(k), 2(l)
Juvenile Justice Act, 1986 — Section 2, 2(h)
Penal Code, 1860 (IPC) — Section 302, 34, 341

Citation : (2014) 4 GLT 64 : (2014) 2 GLT 768

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : D. Talukdar, Advocate for the Appellant; K. Munir and Addl. P.P, Advocate for the Respondent

Judgement

Arup Kumar Goswami, J.—The challenge made in this petition filed u/s 482 read with Sections 401/397 Cr.P.C. read with Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000, for short, Act of 2000, is an order dated 29.12.2011 passed by the learned Additional District and Sessions Judge (FTC) No. 1, Kamrup, Guwahati in Sessions Case No. 278(K)/2001 whereby the plea of the petitioner to extend the benefit of the Act of 2000 to him was rejected. At the outset, relevant facts need to be noticed. On 22.12.1994, one Hemen Kalita had lodged an ejahar before the Officer-in-Charge, Chandmari Police Station alleging that on that day as he along with his friends, Gautam Kalita, Srimanta Bora were going to Nepali Chowk from Ganesh Nagar to arrange for a picnic proposed for the next day, the petitioner, along with Zakir Hussain, Heman Malakar, Sankar Sarma, Arip and Pranjal, at around 8.00 A.M., restrained them from proceeding further near Haldi Mill at Jyotinagar and the petitioner caused a stab injury in the lower abdomen of Gautam, who succumbed to his injuries in a nursing home. On the basis of the said ejahar, Chandmari P.S. Case No. 387/1994, under Sections 341/302/34 I.P.C. was registered.

2. After investigation was completed, charge-sheet was submitted against the petitioner and six others for commission of an offence under Sections 302/34 I.P.C. The case being exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of learned Sessions Judge, Kamrup, at Guwahati. Subsequently, Sessions Case No. 278(K)/2001 was registered in the Court of the Additional Sessions Judge (FTC) No. 1, Kamrup, at Guwahati.

3. The trial had commenced and argument was also advanced on 07.04.2011. It so transpires that the petitioner had filed a petition being Petition No. 750 on 18.08.2003 praying for treating the petitioner as a juvenile and to give him the benefit of the Act of 2000. The said petition was rejected by an order dated 07.04.2004. From the evidence of Smti Khatana Begum, who had exhibited the Certificate of Birth, the learned Court below recorded a finding that the date of birth of the petitioner is 01.01.1978 and thus, on the date of alleged occurrence, he was a boy of above 16 years. Holding that u/s 2(h) of Juvenile Justice Act, 1986, for short, Act of 1986, benefit of the Act as juvenile is available only upto 16 years, it was recorded that on the date of alleged occurrence on 22.12.1994, he was not a juvenile and accordingly, the petition was dismissed with a further declaration that he be tried along with other accused persons.

4. The aforesaid order dated 07.04.2004 was not put to challenge before any higher forum. While the matter was again fixed for argument after re-examination of P.W. 6, the investigating Officer, the petitioner filed a petition on 05.11.2011 u/s 7-A of the Act of 2000 to declare the petitioner as juvenile and to pass necessary order in accordance with the provisions of the Act of 2000. By the order impugned, the petition was rejected by holding thus:

I have heard the learned Counsel for the accused/petitioner and also learned Addl. P.P. During hearing, Id. Addl. P.P. raised objection that earlier the plea of juvenile was raised by this accused/petitioner Zakir Hussain in this court vide a petition bearing No. 750 dated 18/8/2003 and after making thorough enquiry, this Court have already come to a findings that the date of birth of the accused/petitioner was 1.1.1978 and on the date of alleged occurrence he was above 16 years and at the time of alleged occurrence, the old Juvenile Justice Act was in force and hence, the benefit of Juvenile Justice Act cannot be extended to the accused/petitioner, as because as per old Juvenile Act, the accused was not a juvenile on the date of alleged occurrence and hence, now this Court is not in a position to recall its own order and extended the benefit of Juvenile Justice (Care and Protection) Act, 2000 to the accused/petitioner.

I have also perused the petition of the accused Rajib Hussain and also perused the order dtd. 18.08.2003. It appears that earlier the plea of juvenile for accused/petitioner was raised vide Petition No. 750 dated 18.8.2003 and vide Order dated 7.4.2004, the then learned trial judge came to a conclusion that the date of birth of accused Rajib Hussain is 1.1.1978 and allegation being taken place on 12.12.1994 he was found to be a boy of above 16 years and on the date of alleged occurrence, the old Juvenile Justice Act, being in force and as per

provision of said Act, a boy up to 16 years being only a juvenile, hence, accused Rajib Hussain was not juvenile on the date of alleged occurrence and accordingly, he dismissed the said petition bearing No. 750 at 18.8.2003.

Hence, after going through the aforesaid order dated 7.4.2011 passed by this court, I have seen that the plea was earlier raised in this court and being dismissed by the same court, now, this court is not in a position to recall its own order dated 7.4.2004 and accordingly, to extend the benefit of the Juvenile Justice (Care and Protection) Act, 2000, to the accused/petitioner Rajib Hussain. Hence, the petition filed by the accused/petitioner Rajib Hussain bearing Petition No. 2253 dated 5.11.2011 stand rejected.

5. Mr. Talukdar has submitted that it is not in dispute that the petitioner was below the age of 18 years on the date of alleged occurrence and therefore, in view of the provisions as contained in Act of 2000, the petitioner would be entitled to be declared a juvenile notwithstanding the fact that at the time of alleged date of occurrence. Act of 1986 was in force. To substantiate his submission, learned counsel has drawn the attention of this Court to Sections 2(k), 2(l), 7-A, 20 and 49 and Rule 12, Rule 97 and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, for short, Rules of 2007. He has also relied on a decision of the Division Bench of this Court in Bulu Ali Vs. State of Assam, as well as in the cases of Dharambir Vs. State (NCT of Delhi) and Another, and Amit Singh Vs. State of Maharashtra and Another, . Learned counsel also submits that although the plea of the petitioner for treating him to be a juvenile was wrongly rejected earlier in the year 2004 and though such an order of rejection was not assailed, the same cannot be taken as a ground to deny the benefit of the provisions of the Act of 2000 when otherwise the petitioner is entitled to such benefit, being a juvenile on the date of occurrence.

6. Mr. Munir, learned Additional Public Prosecutor, Assam has submitted that law appears to be well settled that if on the date of alleged occurrence, which may be even prior to the coming into force of the Act of 2000, the person committing the crime was below 18 years, he would be entitled to be considered as a juvenile in conflict with law in terms of the Act of 2000. The learned Additional Public Prosecutor has also cited decisions in the case of Ashwani Kumar Saxena Vs. State of M.P., and Hari Ram Vs. State of Rajasthan and Another, .

7. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. The Act of 2000 was enacted to deal with offences committed by juveniles, in a manner which was meant to be different from the law applicable to adults. The scheme of the Act of 2000 is rehabilitatory in nature and not adversarial, which is otherwise the setting in which the Courts have to deliver justice. It would be worthwhile and fruitful to consider the various provisions cited by Mr. Talukdar and with this in mind, Sections 2(k), 2(l), 7-A, 20 and 49 and Rule 12, Rule 97 and Rule 98 of the Rules of 2007 are reproduced herein below:

2(k). "juvenile" or "child" means a person who has not completed eighteenth year of age;

2(l). "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

[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 thereunder, 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.]

20. Special provision in respect of pending cases.--Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had 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 the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.--In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

Rules:

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 or 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 or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every 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 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 in respect of his 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 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 7A, 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 of 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.

97. Pending cases.--(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.

(4) While computing the period of detention or stay or sentence of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board.

98. Disposed off cases of juveniles in conflict with law.--The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law u/s 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the said Act.

9. In *Bulu Ali (supra)*, the appellant was accused of having committed murder of his elder brother on 03.09.1996. When the statement of the appellant was recorded u/s 313 of the Cr.P.C. on 26.08.2002, his age was shown to be above 24 years. This Court had taken the view that the appellant was probably a juvenile when he committed the offence of murder. The Division Bench of this Court had held that in the aforesaid factual situation, the appellant would be governed by the provisions of the Act of 2000 and the Rules of 2007. The factual matrix of this case is more or less same as in the case of *Bulu Ali (supra)*. In this case also the alleged date of commission of offence was prior to the coming into force of the Act of 2000 and the petitioner was, on that date, less than 18 years of age.

10. In *Hari Ram (supra)*, the appellant was arrested on 30.11.1998 when the Act

of 1986 was in force and under clause (h) of Section 2, a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. In paragraph 59, the Apex Court laid down as follows:

59. The law as now crystallized on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1.4.2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

11. Paragraphs 66 to 70 of Hari Ram (*supra*) are very relevant on the issue and therefore, they are quoted herein below:

66. Section 7-A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000.

(emphasis supplied by this Court)

67. Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the Juvenile had ceased to be so on or before the date of commencement of the Act."

68. Accordingly, a Juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

(emphasis supplied by this Court)

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a Juvenile in conflict with law, the determination of Juvenility of such a Juvenile would be in terms of clause (1) of Section 2 of the 2000 Act. and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

70. in the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years-of age. In view of Section 2(k), 2(l) and 7-A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he

was a juvenile.

12. In *Dharambir* (supra), as per the report of the Registrar submitted in terms of Section 7A of the Act of 2000, the age of the appellant as on the date of commission of offences i.e. 25.08.1991 was 16 years 9 months and 8 days. The correctness of the estimate of age by the Registrar was not questioned by the State and the parties had accepted the correctness of the age determined by the Registrar. The Supreme Court, reaffirmed the view taken in *Hari Ram* (supra) as follows:

14. Proviso to sub-section (1) of Section 7-A contemplates that a claim of juvenility can be raised before any Court and has to be recognized at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the Rules framed thereunder, even if the Juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a Juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of Section 2(k) of the said Act, which defines "Juvenile" or "Child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act.

15. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 01.04.2001 would be treated as juveniles even if the claim of Juvenility is raised after they have attained the age of eighteen years on or before the date of commencement of the Act of 2000 and were undergoing sentences upon being convicted. In that view we have taken, we are fortified by the dictum of this Court in a recent decision in *Hari Ram Vs. State of Rajasthan and Another*, .

13. Accordingly, in the light of the aforesaid legal position, in *Dharambir* (supra), the appellant was held to be a Juvenile as on the date of commission of the offence for which he had been convicted and was to be governed by the provisions of the Act of 2000.

14. In *Ashwani Kumar Saxena* (supra), same view as in *Hari Ram* (supra) was reiterated in paragraph 15.

15. Similar is the position in *Amit Singh* (supra). In that case, the date of birth of the petitioner was 10.05.1982 and on the date of the alleged incident, which took place on 01.05.1999, his age was 16 years 11 months and 21 days i.e. below 18 years and therefore it was held that the petitioner was a juvenile in terms of the Act of 2000 because he had not completed 18 years of age and thus entitled to the provisions of the Act of 2000. It was held as follows:

21. Inasmuch as the date of birth of the petitioner is 10.5.1982 and on the date

of the alleged incident which took place on 1.5.1999, his age was 16 years, 11 months and 21 days i.e. below 18 years, hence on the date of the incident, the petitioner was a juvenile in terms of the Act because he had not completed 18 years of age and is entitled to get the benefit of the provisions under Sections 2(1), 7-A, 20 and 64 of the Act. It is also specifically asserted that the petitioner had already undergone 12 years in jail since then which is more than the maximum period for which a juvenile may be confined to a special home.

16. The position that emerges from the provisions of the Act of 2000, Rules of 2007 and the decisions considered hereinabove is that claim of juvenility can be raised before any Court at any stage and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the Rules of 2007 even if a juvenile ceases to be a juvenile on or before the commencement of the Act on 01.04.2001 and that all persons below the age of 18 years on the date of commission of the offence even prior to 1.4.2001, would be treated as juveniles even if the claim of juvenility is raised after they had attained the age of 18 years on or before the date of commencement of the Act and are undergoing sentence. In other words, a juvenile who had not completed 18 years on the date of commission of the offence is entitled to the benefits of Act of 2000 even if the offence was committed during the operation of the Act of 1986.

17. It is true that the petitioner had agitated the plea of juvenility by filing a petition on 18.08.2003, which had been rejected on 07.04.2004. However, I am inclined to accept the submission of Mr. Talukdar that not pursuing a remedy in a higher forum immediately after rejection of the said petition will not negate the claim of the petitioner in view of the settled position of law. There is no dispute that on the date of commission of the crime, the petitioner was below the age 18 years and therefore, he has to be declared and treated as a juvenile. Of-course, the learned Additional Sessions Judge, while passing the impugned order, was correct in holding that he was unable to review the order passed by his predecessor. However, there is no impediment for this Court to hold the petitioner to be a juvenile on the date of occurrence in view of the admitted factual premise with regard to his date of birth.

18. In view of the above discussions, the petitioner has to be declared to be a juvenile on the date of the occurrence on 22.12.1994. Accordingly, the learned Additional Sessions Judge (FTC) No. 1. Kamrup, at Guwahati is requested to forward the papers to the Juvenile Justice Board Kamrup, at Guwahati for passing appropriate orders in terms of the provisions of the Act of 2000.

19. The Petitioner will appear before the Juvenile Justice Board, Kamrup, Guwahati on 16.06.2014.

20. Registry will transmit the records of the case to the learned Additional Sessions Judge (FTC) No. 1. Kamrup at Guwahati forthwith.

21. Learned Additional Sessions Judge (FTC) No. 1. Kamrup at Guwahati is also requested to send the papers to the learned Juvenile Justice Board. Kamrup,

Guwahati, well ahead of the date fixed for appearance of the petitioner. The petition stands allowed.