

(2015) 12 TP CK 0036
In the Tripura High Court
Case No : Criminal Rev. P. No. 47 of 2011

Ratna Das (Sarkar)

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 482
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 7A
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2015) 12 TP CK 0036

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : Somik Deb and S. Lodh, Advocates, for the Appellant; A. Ghosh, P.P., for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—By means of this revision petition under Section 397 read with section 482 of the Cr.P.C., the judgment and order dated 02.12.2010 delivered in G.R. No. 235 of 2007 by the Juvenile Justice Board, North Tripura, Kailasahar, as it then was, has been called in question, but the challenge is limited on the sentence.

2. It has been urged that the inquiry into the juvenility of the respondent No. 2 has been seriously vitiated inasmuch as the said inquiry was not carried out in terms of the procedure as laid down in Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000. For purpose of reference, Section 7A is reproduced hereunder:

"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 a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age 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 recognised 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect"

3. There is no dispute that the respondent No. 2 found juvenile before the trial commenced. As he was found juvenile in conflict with law, an inquiry was instituted to find out whether the juvenile has committed the murder of Kaushik Sarkar with the other accused Indrajit Das. For that purpose, the Juvenile Justice Board framed charge under Section 302 /201 /34 of the IPC and the respondent No. 2, the juvenile in conflict with law pleaded innocence. After recording the evidence as led by the prosecution, the juvenile was examined under section 313 of the Cr.P.C. The juvenile denied all the incriminating materials as surfaced in the evidence and reiterated his claim of innocence.

4. On appreciating the evidence meticulously, the Juvenile Justice Board has returned that on 19.06.2007 at about 9.30 p.m. at a place called Santipur under Kailashahar Police Station the juvenile alongwith the other accused person, namely Indrajit Das committed murder of Kaushik Sarkar, son of the petitioner and thereafter they concealed his dead body and motor bike by throwing them into the river Manu. Thus, the Juvenile has been convicted under section 302 /201 /34 of the I.P.C.

5. While imposing sentence in accordance with the provisions of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile Justice Board on considering a decision of the Gauhati High Court in a criminal reference reported in State of Mizoram Vs. Rualhleithanga, released the convict with admonition as the convict crossed 18 years on the day of pronouncing the sentence.

6. The convict, the respondent No. 2 on 02.12.2010 was 21 years of age. As stated, the petitioner has challenged that sentence. Even though, initially the determination of the juvenility had been challenged in this petition, but that objection was abandoned at the time of hearing.

7. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that the reason assigned for not awarding detention is not tenable. There is no bar to sentence for suffering detention for 3 (three) years to a juvenile who committed the crime of murder even after his crossing the age of juvenility. In support of his contention, Mr. Deb, learned counsel has relied on few decisions of

the apex court in Pratap Singh Vs. State of Jharkhand and Another, , Babban Rai and Another Vs. State of Bihar, , Vaneet Kumar Gupta @ Dharminder Vs. State of Punjab, , Dharambir Vs. State (NCT of Delhi) and Another, , Mohan Mali and Another Vs. State of M.P., and R. Ramachandran Nair Vs. The Deputy Superintendent Vigilance Police and Another, .

Mr. Deb, learned counsel appearing for the petitioner, has urged this court to send the respondent No. 2 to suffer detention for three years within the ambit of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

8. From the other side, Mr. Sekhar Datta, learned counsel has submitted that not only the Gauhati High Court, the apex court and as well as this court has in catena of decisions held that the special homes set up for the juveniles in conflict with law cannot be conducive for detention of the non-juvenile person. As such, this petition does not have any substance and it merits no consideration.

9. From the rival contentions, the question that falls for consideration, which according to this court is no more res integra is that when a juvenile in conflict with law crosses the age of juvenility, can he be sent for suffering detention in the special home?

10. Before this court responds to that question, it would be apposite to answer the question related to inquiry into the juvenility as raised but abandoned herein to do justice otherwise. The apex court in Vaneet Kumar Gupta alias Dharminder v. State of Punjab, has held that the transfer certificate is a valid document for proof of age. The Juvenile Justice Board has considered the School Certificate for determining the juvenility of the respondent No. 2 and hence the process does not suffer from any infirmity.

11. In Babban Rai & Anr. v. State of Bihar, a larger bench of the apex court has categorically laid down the law in the following terms :

"Now, the question arises in relation to sentences. In view of our aforesaid finding that these two appellants were juvenile on the date of alleged occurrence and they have now attained majority, it would be just and expedient to set aside their sentences and pass an order of releasing them as they cannot be sent to remand home".

12. The said law has been restated in Dharambir v. State (NCT of Delhi) & Anr. The other reports as placed before this court are not very appropriate in the context of this case as in those cases the juvenile in conflict with law for various contextual reasons suffered imprisonment for more than 3 years. Thus the Juvenile Justice Board by releasing the convict on due admonition did not commit any error, illegality or irregularity, warranting any sort of interference from this court.

In the result, this petition is dismissed.

Send down the LCRs forth with.