
(2015) 03 GAU CK 0029
In the Gauhati High Court
Case No : Criminal Rev. Pet. No. 434 of 2014

Sanjoy Paul

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 2(1), 2(k), 20, 49
Juvenile Justice Act, 1986 — Section 2(h)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 2 GLD 748 : (2015) 2 GLT 415

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, Senior Advocate and A. Motin, for the Appellant;
K.A. Mazumdar, Addl. PP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Prasanta Kumar Saikia, J.—This revision petition has been filed questioning the legality, validity and correctness of the order dated 30.06.2014, passed by the learned Sessions Judge, Darrang, Mangaldoi, in Criminal Misc. Case No. 416/2014 refusing to give the petitioner herein the benefit of section 7(A) of the Juvenile Justice (Care and Protection of Children) Act of 2000 (in a short of Act of 2000) on holding that on the date on which the incident in question, be-curred and which gave rise to Sessions Case No. 249(DM)/2001, the petitioner was not a juvenile in conflict with law, as contemplated under the law. I have heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. A. Matin, learned counsel appearing for the accused petitioner as well as Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam appearing for the State respondent.

2. The facts necessary for disposal of the present proceeding in brief are that on 15.05.1996, one Haridas Debnath, a minor boy, went to Pukhuripar bazar to purchase some commodities. However, he did not return home. Initially, the family members of the victim did not take the matter seriously since the boy had

the habit of watching T.V. in the houses of neighbouring people till late hours.

3. However, on the next day, in the afternoon, some village women found the body of the aforesaid boy floating in the water in the village field. In that connection, an FIR was lodged by one Upendra Ch. Debnath, grandfather of the boy, with the Officer In-charge, Tangla police station. On the receipt of such FIR, O/C, Tangla P.S., registered a case and ordered investigation.

4. The police officer who was entrusted to investigate the case, visited the P.O., conducted inquest on the dead body, examined the witnesses, did other needful and on conclusion of the investigation, he submitted charge sheet under section 302/34 IPC against (i) Jantu Sarkar, (ii) Ranjit Roy @ Babul, (iii) Madhu Dey and (iv) Sanjoy Paul @ Puton (who is the petitioner of the present proceeding) and forwarded them to the court to stand their trial.

5. It may be stated here that the accused Madhu Dey had been shown as absconder in the charge sheet. When the matter was laid before the concerned Magistrate, the same was committed to the Court of Session, Darrang, Mangaldoi, for disposal in accordance with law since the offence u/s. 302 IPC is exclusively triable by court of Session. On receipt of the case on commitment and on hearing the parties, learned Sessions Judge, Darrang Mongoldoi framed charges u/s. 302/34 IPC against the aforesaid three accused persons and their denial to the charge aforesaid, he put them on trial.

6. In course of trial, learned Sessions Judge allowed the prosecution to examine its witnesses, did other needful and on conclusion of the trial, he convicted them of offence under section 302/34 IPC and sentenced them to suffer imprisonment for life and fine of Rs. 1000/- each i/d R.I. for another 6 (six) months vide judgment and order dated 02.09.2003, rendered in Sessions Case No. 249(DM)/2001.

7. On an appeal being preferred before this court against such a judgment, this court admitted the appeal, vide Crl. Appeal No. 307/2003 and on hearing the counsel for the parties, this court was pleased to dismiss the appeal affirming the judgment of the trial court vide judgement and Order dated 11.11.2008 passed by this court in Crl. Appeal No. 307/2003.

8. Against the judgment rendered in Crl. Appeal No. 307/2003, a special leave petition was filed vide Special Leave Petition No. 2209/2013 and Hon''ble Supreme Court of India vide order dated 08.03.2013 was also pleased to dismiss the same.

9. Thereafter, the present petitioner had filed an application before the Sessions Judge stating that on the date of incident, (same being 15.05.1996) which gave rise to Sessions Case No. 249(DM)/2001, he was a juvenile in conflict in law. On the basis of such application, Misc. Case No. 416/2014 was registered. In support of such contention, the petitioner had produced before the Sessions Judge, Darrang, Mangaldoi, the extract of admission register, issued by

Thakuriapara Lower Primary school where the petitioner got enrolled for the first time.

10. In that connection, he also furnished before such court the extract of statement of candidates appearing in High School Leaving Certificate Examination (in short, HSLC) held in 1995 from Thakuriapara High School which was issued by Thakuriapara High School as well as statement of candidates appearing in High School Leaving Certificate Examination held in 1995 issued by the Board of Secondary Education, Assam.

11. However, the learned court below while deciding the question of juvenility of the petitioner herein did not rely on those documents since he found some overwriting in respect of the age of the petitioner in the admission register issued by school where the petitioner got enrolled for the first time. Therefore, he refused to accept the statements in such admission register as genuine in so far the age of the petitioner is concerned. Since he considered the information in admission register, issued by Thakuriapara Lower Primary school to be not genuine, he also considered all other documents, relied on by the petitioner to be unreliable.

12. In result, he held that on the date of incident in question, the petitioner was not a juvenile in conflict with law and as such, he rejected aforesaid application.

The relevant part of the judgment is reported below:

"CR Misc Case 416/14

30.06.2014

The petitioner is present. This order disposes of the prayer of the petitioner. The petitioner has claimed that on the day of occurrence, he was a juvenile in conflict with law. I have heard the learned counsel at length. The learned counsel has relied upon two decisions of Hon"ble Supreme Court to buttress his argument. The judgments are Dharambir Vs. State (NCT of Delhi) and Another, AIR 2010 SC 1801 : (2010) CriLJ 2852 : (2010) 2 Crimes 399 : (2010) 6 JT 273 : (2010) 4 SCALE 316 : (2010) 5 SCC 344 : (2011) AIRSCW 1001 and Hari Ram Vs. State of Rajasthan and Another, (2009) 8 JT 47 : (2009) 6 SCALE 695 : (2009) 13 SCC 211 : (2009) 7 SCR 623 : (2009) 6 UJ 2643 .

Here in this case, the petitioner has filed the admit card issued by Secondary Education Board, Assam wherein his date of birth is shown as 30.12.1978. The petitioner intended to show that on the day of occurrence, he was 17 years 4 months and 15 days.

During the enquiry period, the original school admission register of Thakuriapara LP School was produced before this court and the headmaster (PW1) was examined to that effect. This document has been proved in original. I have found that this document is a very old one and is in very shabby condition. The relevant entry which has been exhibited as Ext. (A)(1) has become illegible. I

have found that these documents have been tempered with because the date of admission into the school has been over written. It goes to show that the aforesaid entry has been doctored so that it tallies with the admit card issued by SEBA. I have every reason to hold that the admit card of the petitioner shows a wrong date of birth because his original primary school record shows a different age which is illegible but subsequently corrected so that it tallies with the date of birth shows in the admit card issued by SEBA.

Under this circumstance, I feel it is hard to believe that on the day of occurrence, the petitioner was a juvenile in conflict with law. Under the aforesaid circumstances, the prayer made by the petitioner is dismissed. This case is accordingly disposed of on contest."

13. According to Mr. H.R.A. Chowdhury, learned senior counsel, the order aforementioned is unsustainable in law since in deciding the juvenility of an accused person on the date of the incident, the court at first needs to look into the certificate, issued by the Board of Secondary Education, in terms of Rule 12 of the Juvenile Justice Rules. Only when such document is found not available other documents such as certificate, issued by the school where such accused person enrolled first, etc are to be looked into.

14. According to Mr. Choudhury, the age certificate, issued by Board of Secondary Education, Assam in the form of statements of candidates who appeared in HSLC examination held in 1995 showing the date of birth of the petitioner is the best evidence of a person seeking the benefit of Section 7(A) of the Act of 2000 and same needs to be acted upon unless it is shown that such document cannot be accepted for one reason or other.

15. Since there is nothing on record to show that such a document suffers from any infirmity whatsoever and since it is the best of evidence of the matter under consideration, it could not have been rejected by the court below. Since such a document which law places on the highest pedestal as far as age of a person seeking benefit of Section 7(A) of the Act of 2000 is concerned is rejected illegally, the order under challenge becomes unsustainable in law.

16. Learned Senior counsel appearing for the petitioner, therefore submits that only for some over writings in the admission register, issued by Thakuriapara Lower Primary school, it cannot be concluded that said register in so far age of petitioner is concerned is not genuine. Rather, when the statement in admission register is considered alongside other documents, produced by petitioner before the court below, more particularly, the document issued by the Board of Secondary Education, Assam, there cannot be any escape from the conclusion that all the documents relied on by the petitioner are genuine and as such, it needs to be concluded that on the date of the incident, the petitioner was a juvenile as contemplated under the Act of 2000.

17. Learned counsel appearing for the petitioner further submits that the incident in question occurred in 1996 whereas all the documents, produced by the

petitioner in support of his age including the statement, issued by the Board of Secondary Education, Assam pertain to the period prior to the date of incident and this again shows that age certificates, produced by the petitioner, cannot be suspected on any count whatsoever.

18. In support of his contention, my attention has been drawn to the provisions of Rule 12 of the Rules framed under the Juvenile justice Act. The relevant part is reproduced below:--

"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 or 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 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 regard such child or the juvenile in conflict with law."

19. The submission so advanced by the learned counsel for the petitioner is not disputed by the Addl. Public Prosecutor.

20. I have perused the provisions so recorded in Rule 12 and found that when a question arises as to whether or not a person was a juvenile in conflict with law on the date on which alleged crime was committed, the court concerned needs to focus its attention first on the matriculation or equivalent certificate. If such certificate is not found, only then, the court needs to look into the certificate issued by the School authority where such person got enrolled for the first time.

21. However, when such certificate is not available, the court needs to look into the birth certificate issued by Panchayat etc. But when all those certificates/documents were not available, only then medical certificate on the age of such person needs to be obtained. Therefore, it is found that the best certificate in the proceeding under Rule 12 r/w Section 7(A) of the Act of 2000 is matriculation certificate or certificate of equivalent examination.

22. I have found that such a certificate is found available in the present case in the form of statement of candidates appearing in High School Leaving Certificate Examination held in 1995 issued by the Board of Secondary Education, Assam. There is nothing on record to show that the document, issued by the Board of Secondary Education, Assam is not reliable for one reason or other. More importantly, other documents, submitted by the petitioner, as stated above, are also found to genuine.

23. Being so, in my considered opinion, learned Court below had clearly gone wrong in not taking into account the admit card, issued by the Board of Secondary Education, Assam, relying on some overwriting in the admission register which has little relevance in the present case in so far age of the accused person on the date of incident is concerned. Being so, the order under challenge is liable to be quashed and set aside which I accordingly do.

24. On considering entire materials on record, we have found that the petitioner's date of birth 13.12.78. The incident in question took place on 15.05.1996 meaning thereby that on the date of incident, the petitioner was 17 years 4 months 1.5 days.

25. It may be stated that the incident occurred on 15.05.1996. Therefore, during such time, the Juvenile Justice Act of 1986 held the field. Under the Act of 1986, a boy continued to be a juvenile only up to the age of 16 years whereas a girl continued to be so till she attained the age of 18 years.

26. We have already found that on the date of the incident in question, age of the petitioner was 17 years, 4 months 15 days. Being so, under the old Act, he ceased to be juvenile on the date of incident But then, the Act of 2000 extended the juvenility in case of a boy up to 18 years.

27. Now, the question whether the petitioner can still avail of the benefit of Act of 2000 in so far age of juvenility is concerned. This question has come up for

discussion in the case of Hari Ram Vs. State of Rajasthan and Another, (2009) 8 JT 47 : (2009) 6 SCALE 695 : (2009) 13 SCC 211 : (2009) 7 SCR 623 : (2009) 6 UJ 2643 and Hon"ble Apex Court has answered such a question in affirmative. Such a decision clearly covers the case of the petitioner herein as well.

28. The relevant part is reproduced below-

"39. The explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (1) of section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purpose and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

59. The law as now crystallized on a conjoint reading of Section 2(k), 2(1), 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 attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted".

29. Similar view has been rendered in the case of Dharambir Vs. State (NCT of Delhi) and Another, AIR 2010 SC 1801 : (2010) CriLJ 2852 : (2010) 2 Crimes 399 : (2010) 6 JT 273 : (2010) 4 SCALE 316 : (2010) 5 SCC 344 : (2011) AIRSCW 1001 and the relevant part is reproduced below:--

"6. The question for determination is whether or not the applicant, who was admittedly not a juvenile within the meaning of the Juvenile Justice Act, 1986 (for short "the 1986 Act) when the offences were committed but had not completed 18 years of age on that date, will be governed by the Act of 2000 and be declared as a juvenile in relation to the offences alleged to have been committed by him?

7. Before advertng to the question, we may note that the issue with regard to the date, relevant for determining the applicability of either of the two Acts, insofar as the age of the accused, who claims to be a juvenile/child, is concerned, is no longer res integra. On account of divergence of views on the point in Umesh Chandra v. State of Rajasthan and Amit Das v. State of Bihar, the matter was referred to the Constitution Bench in Pratap Singh v. State of Jharkhand. Affirming the view taken by a Bench of three Judges in Umesh

Chandra case, the Constitution Bench held that the relevant date for determining the age of the accused, who claims to be a juvenile/child, would be the date on which the offence has been committed and not the date when he is produced before the authority or in the court.

8. In the same judgement, the Bench also dealt with the question as to whether the Act of 2000 will be applicable in a case where proceedings were initiated under the 1986 Act and were pending when the Act of 2000 was enacted with effect from 1.4.2001. Taking into consideration the provisions of Sessions 3 and 20 along with the definition of "juvenile" in Section 2(k) of the Act of 2000, as contrasted with the definition of a "male juvenile" in Section 2(h) of the 1986 Act, by majority, it was held that the Act of 2000 would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the Act of 2000 came into force and the person concerned had not completed 18 years of age as on 1.4.2001. In other words, it was held that a male offender, against whom proceedings had been initiated under the 1986 Act in any court/authority and had not completed the age of 18 years as on 1.4.2001, would be governed by the provisions of the Act of 2000".

30. In view of above and also in view of my forgoing discussion, it needs to be concluded that on the date of the incident, the present petitioner was a juvenile in conflict with law and as such, he needs to be given the benefit of Section 7(A) of the Act of 2000.

31. Being so, the order under challenge is found to be unsustainable and same is accordingly quashed and set aside.

32. Since on the 15.05.1996, the petitioner was found to be a juvenile in conflict with law, he could not have been tried by a regular court. He was to have been tried by Board, constituted under the Act of the law dealing with crime committed by a juvenile in conflict with law.

33. Therefore, the sentence, imposed upon the petitioner on his conviction of offence u/s. 302 IPC in Sessions Case No. 249(DM)/2001, which was affirmed by this court in Criminal Appeal No. 307/2003 and which was further affirmed by the Hon'ble Apex Court in Special Leave Petition No. 2209/2013, in so far as same relates to the present petitioner, in view of provision, incorporated in Section 7(A) (2) of the Act of 2000 shall be deemed to have no effect.

34. Section 7(A)(2) of the Act of 2000, it may be noted, says that when a person, who was convicted of offence (s) and was sentenced to imprisonment for such offence(s), is subsequently found to be a juvenile in conflict with law on the date of occurrence of incident, is given the benefit of 7(A)(2) of the Act of 2000, then court, dealing with such matter, while giving such person the benefit, contemplated under aforesaid provision of law, is required to direct such person to appear before the concerned Juvenile Justice Board to take further Order.

35. But in our present case, we have already found that the petitioner has

already been in custody for a period close to 11 years till date in connection with Sessions Case No. 249(DM)/2001.

36. Being so, I hardly find any reason to direct the petitioner to report before the concerned Juvenile Justice Board to receive further order in terms of Section 7(A) (2) of the Act of 2000.

37. Situation being such, while maintaining the conviction of the petitioner U/s. 302 of the IPC in connection with Sessions Case No. 249(DM)/2001, he is ordered to be released forthwith if he is not required in connection with any other case.

38. Return the LCR forthwith. This revision is accordingly disposed of.