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**(2013) 10 JH CK 0008**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (DB) No. 1215 of 2004**

Shyam Pado Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 29-10-2013

**Acts Referred:**

**Citation :** (2014) 1 AJR 714 : (2013) 4 JLJR 565

**Hon'ble Judges :** P.P. Bhatt, J; Narendra Nath Tiwari, J

**Bench :** Division Bench

**Advocate :** P.P.N. Roy, for the Appellant;

**Final Decision :** Disposed Off

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## **Judgement**

1. The sole appellant - Shyam Pado Mandal, who, having been convicted under Sections 302 /34 read with Sections 307 /34 of the Indian Penal Code was sentenced for rigorous imprisonment for life along with a fine of Rs. 10,000/- under Sections 302 /34 of the Indian Penal Code, in default of payment of fine he is to further undergo six months rigorous imprisonment. So far as Sections 307 /34 of the Indian Penal Code is concerned, he was sentenced to five years rigorous imprisonment and a fine of Rs. 5000/-, in default of payment of fine, he shall further undergo rigorous imprisonment of three months, both the sentences shall run concurrently, after serving about nine years of his sentence, claimed himself to be a juvenile on the date of commission of offence in this Court, during pendency of this appeal. He also filed an application u/s 7-A read with Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as the Act) praying for his remand to the Juvenile Justice Board, Seraikella-Kharsawan for the purpose of holding an inquiry regarding his juvenility and for further proceeding thereafter in accordance with law.

2. Vide order dated 24.7.2013, the matter was referred to the Juvenile Justice Board, Seraikella-Kharsawan for determination of the age of the appellant and

submission of report. The report dated 14.8.2013 was thereafter submitted holding the appellant to be a juvenile. On the basis of the report of the Board, the age of the appellant, on the date of occurrence, comes to 14 to 17 years.

3. On receipt of the said report of the Board, learned counsel for the appellant prayed for passing order in accordance with law.

4. Learned senior counsel for the appellant submitted that the appellant being held to be a juvenile, on the date of commission of the offence, is required to be dealt with under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 and the case be sent to the Juvenile Justice Board, Seraikella-Kharsawan for holding inquiry under the provisions of Section 14 of said Act.

5. Learned senior counsel further submitted that since the said point was not earlier taken by the appellant due to ignorance of law, he was tried in the regular court and has been convicted in the sessions trial under Sections 302 /34 read with Sections 307 /34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Sections 302 /34 of the Indian Penal Code along with fine of Rs. 10,000/- and five years rigorous imprisonment along with a fine of Rs. 5000/- for committing offence under Sections 307 /34 of the Indian Penal Code. Both the sentences are to run concurrently.

6. He submitted that the appellant thereafter has already served sentence for more than 9 years by now.

7. Learned counsel submitted that in such a situation, directing for inquiry, by the Board, regarding the offence, for which he has been charged would offend the object and spirit of the said law, as the appellant has already suffered the rigour of the regular trial in the Sessions Court and has also served the sentences for more than 9 years, whereas Section 15(1)(g) of the Act prescribes maximum period of stay of Juvenile in a special home upto three years.

8. He urged that the appellant has already served the sentences for more than 9 years and it would not be Just and proper in the interest of justice to forward the appellant to the Board for passing appropriate order as envisaged u/s 7-A(2) of the Act.

9. Learned senior counsel submitted that Hon"ble Supreme Court has dealt with almost similar case in Lakhan Lal Vs. State of Bihar, and this Court has also delivered the judgment by following Lakhan Lal's case (supra) in Criminal Appeal (DB) No. 777 of 2009 on 20.8.2013 and this case is squarely covered by the said decisions.

10. Learned counsel submitted that in the instant case, facts and circumstances are almost similar to the Lakhan Lal's case (supra). As per report of the Juvenile Justice Board, the appellant was a juvenile on the date of commission of the offence. However, due to ignorance, he was tried by the regular Sessions Court and convicted under Sections 302 /34 read with Sections 307 /34 of the Indian Penal Code and sentenced to undergo rigorous life imprisonment under Sections

302 /34 of the Indian Penal Code coupled with fine of Rs. 10,000/- and five years rigorous imprisonment along with a fine of Rs. 5000/- for committing offence under Sections 307 /34 of the Indian Penal Code. Appellant has already served the sentences for more than 9 years and the appellant deserves to be released after setting aside his sentences in the light of the decision of the Apex Court in Lakhan Lal's case.

11. Learned APP opposed the contention and prayer of the appellant. He submitted that appellant all remained silent and never made the claim of juvenility earlier. Having not taken the said ground earlier, the appellant does not deserve any benefit of the said Act.

12. Learned APP submitted that alternatively he is required to be dealt with the provision u/s 15 of the said Act and he can be forwarded to the Juvenile Justice Board for passing the appropriate order u/s 15 of the said Act. He further submitted that under the provision of Section 7-A(2), the sentence passed by the Court shall be deemed to ineffective.

13. Learned APP submitted that the effect of Section 7-A(2) was not considered in the decisions of the Hon''ble Apex Court, as referred to and relied upon by the learned counsel for the appellant and as such, this case is not covered by those decisions.

14. Having heard learned counsel for the parties and perused the impugned judgment of conviction of the appellant as well as the reports submitted by the Juvenile Justice Board, Seraikella-Kharsawan, we find that learned trial court, after thorough discussion of the facts/evidences on record, found that prosecution was able to establish the charges u/s 302 /34 read with Sections 307 /34 of the Indian Penal Code against the appellant.

15. Learned court below has come to the said findings on detailed discussion and consideration of the testimonies of PW 1 to PW 9 as well as medical evidence of PW 10 and PW 11.

Learned trial court found the charges against the appellant fully established beyond all reasonable doubt.

16. On meticulous scrutiny of the facts and evidence on record, we find no infirmity in the said findings of the learned trial court.

17. In view of the sufficient materials and evidences to establish the guilt of the appellant, learned senior counsel for the appellant has not challenged the findings and conviction of the appellant but has persuasively prayed for the appellant's release on the ground of his juvenility on the date of commission of the offence by setting aside the impugned sentence, in the light of the judgment of the Hon''ble Supreme Court in the case of Lakhan Lal (supra) and judgment delivered by this Court in Criminal Appeal (DB) No. 777 of 2009.

18. Learned APP tried to persuade us to forward the juvenile to the juvenile

Justice Board for passing appropriate order, in the light of the provisions u/s 7-A(2) of the Act.

19. Having heard extensive arguments of the both parties and examined the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as also the several decisions of the Hon''ble Supreme Court, including the case of Lakhani Lal (supra), we are unable to accept the submissions of learned APP.

20. Section 7-A of the Act provides procedure to be followed when claim of juvenility is raised before any court. Section 7-A runs thus:

7-A. 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 inquiry, 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.

21. On plain reading of the said Section, we find that the claim of juvenility can be raised and determined, at any stage, even if the juvenile has ceased to be so, on or before the date of commencement of this Act.

22. In view of that provision, the appellant's claim was entertained by this Court and got enquired by the Board.

23. The Juvenile Justice Board, Seraikella-Kharsawan after holding enquiry reported that the appellant was juvenile on the date of commission of the offence. The said report has not been challenged by the State-Respondent.

24. Section 7-A(2) provides that if the court finds a person to be a juvenile on the date of commission of the offence, it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, shall be deemed to have no effect.

25. Once the appellant is held to be a juvenile, he should have been forwarded to the Board for passing appropriate order under the said provision.

26. However, Section 15 of the Act which makes a provision for passing the order

regarding juvenile by the Board, prescribes maximum penalty of sending juvenile to a special home for a period of three years vide Section 15(1)(g).

27. It is not disputed at Bar that the appellant has already served sentences for more than 9 years.

28. In the case of Lakhan Lal Vs. State of Bihar, appellant - Lakhan Lal was aggrieved by dismissal of his criminal appeal by the High Court, whereby his conviction u/s 302 read with Section 34 of the Indian Penal Code for committing murder was affirmed by the High Court. In course of hearing of the appeal by the Apex Court it was submitted that at the time of commission of the offence, the said appellant was a juvenile within the meaning of Section 2(k) of the said Act and therefore, the order of sentences passed against the appellant are liable to be set aside. Hon''ble Supreme Court thereafter considered the said submissions in the light of earlier judicial pronouncements, including the decision of the Constitution Bench in the case of Pratap Singh Vs. State of Jharkhand and Another, and the decisions in the cases of Bhola Bhagat Vs. State of Bihar, ; Gopinath Ghosh Vs. The State of West Bengal, ; Bhoop Ram Vs. State of U.P., and Pradeep Kumar, Krishan Kant and Jagdish Vs. State of U.P., Hon''ble Apex Court then ruled that while sustaining the conviction of the appellant for the charges, sentences awarded to them need to be set aside. In the case of Lakhan Lal (supra), on the date of consideration, the appellants had crossed the age of 40 years. It was, thus, held that it would not be conducive to the environments the special home and also in view of the fact that they had undergone an actual period of sentences of more than three years-the maximum period provided u/s 15 of the 2000 Act. While sustaining the conviction of the appellants for the offences punishable u/s 302 read with Section 34 of the Indian Penal Code, the sentences awarded to them was set aside.

29. In view of the admitted facts of the instant case, we are of the view that the case of the appellant falls within the ambit of law laid down by the Hon''ble Supreme Court in Lakhan Lal''s case (supra) and the judgment delivered by this Court in Criminal Appeal (DB) No. 777 of 2009 wherein the judgment delivered by the Hon''ble Apex Court in Lakhan Lal''s case (supra) has been followed.

30. In the instant case, the appellant is now aged about 33 years and we feel that it would not be conducive to send him to special home, particularly, when he has already undergone more than 9 years'' period of sentences as against the maximum period of penalty of three years confinement in a special home as provided u/s 15(1)(g) of the Act

31. In view of the discussions and the reasons recorded here-in-before, while confirming the conviction of the appellant under Sections 302 /34 read with Sections 307 /34 of the Indian Penal Code, we set aside the sentence awarded to him.

32. The appellant is, accordingly, directed to be released forthwith, in not required in any other case. This appeal is disposed of.