

GAHC040000762023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.A./4/2023

Punyo Nama
S/o Late Punyo Tatu,
Permanent Resident of Village Hong,
PO/PS Hapoli, District Lower Subansiri, Arunachal Pradesh.
Presently languishing in District Jail Jully, Itanagar.

VERSUS

THE STATE OF AP and Anr.
Represented by P.P (AP) 2:Punyo Sanu
Age: 0
Occupation :
W/o Late Punyo Tatu

Permanent Resident of Village Hong
PO/PS Hapoli
District Lower Subansiri
Arunachal Pradesh

Advocate for the Petitioner : Jaya Doji

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA
HONBLE MR. JUSTICE KAKHETO SEMA**

ORDER

Date : 25.09.2023
(NaniTagia, J)

Heard Ms. J. Doji, learned legal aid counsel for the appellant. Also heard Mr. T. Ete, learned Addl. Public Prosecutor for the State representing the respondent no. 1 as well as Ms. L. Gee, learned counsel for the respondent no. 2, the informant.

This is an appeal, filed under Section 374(2) of the Cr.P.C., challenging the Judgment and Order, dated 13.03.2018 as well as the order of sentence, dated 13.03.2018, passed by the learned Sessions Court, West Sessions Division, Yupia in Sessions Case No. 58/14(YPA) convicting the appellant, under Section 302 IPC and thereby sentencing the appellant to undergo rigorous imprisonment for life with a fine of Rs. 2,000/- with default stipulation.

The ground on which, the impugned Judgment and Order, dated 13.03.2018 as well as the sentence Order, dated 13.03.2018 passed by the learned Sessions Court, West Sessions Division, Yupia in Sessions Case No. 58/14(YPA) convicting the appellant, under Section 302 IPC and sentencing to undergo rigorous imprisonment for life with a fine of Rs. 2,000/- with default stipulation, is the Order, dated 12.01.2023, passed in Misc Case No. 02/2023 in Sessions Case No. 58/14(YPA), whereby, the appellant has been declared a Juvenile, being aged 17 years 4 months and 19 days on the date of commission of offence i.e., 23.08.2014.

On examination of the Order dated, 12.01.2023, passed in Misc Case No. 02/2023 in Sessions Case No. 58/14(YPA) by the learned Sessions Court, West Sessions Division, Yupia, declaring the appellant to be a Juvenile, it was found that the determination of the Juvenility of the appellant by the aforesaid Order, dated 12.01.2023 was not made in accordance with law.

Accordingly, this Court, by the Orders dated 25.07.2023 and 03.08.2023 had directed the learned Sessions Court, West Sessions Division, Yupia, to re-determine the Juvenility of the appellant in the Misc Case No. 02/2023 in Sessions Case No. 58/14(YPA) by following the due process of law.

After the Juvenility of the appellant was determined by the learned Sessions Court, West Sessions Division, Yupia, the report of such determination was directed be placed before this Court and the appeal be listed accordingly. Pursuant to the aforesaid order, the learned Sessions Court, West Sessions Division, Yupia has passed an Order in the Misc Case No. 02/2013 in Sessions Case No. 58/14(YPA), dated 18.08.2023, a report of which has been sent to this Court. We have perused the Order, dated 18.08.2023, passed in I.A.(Crl.) No. 106/2023 in Misc Case No. 02/2023.

On perusal of the Order, dated 18.08.2023, passed in I.A.(Crl.) No. 106/2023 in Misc Case No. 02/2023, we find that the appellant has been found to be a Juvenile, being aged 17 years 4 months and 19 days at the time the offence was committed i.e., 23.08.2014. The aforesaid determination has been made by the learned Sessions Court, West Sessions Division, Yupia by providing an opportunity to the learned Public Prosecutor representing the State.

The Order, dated 18.08.2023, passed in I.A.(Crl.) No. 106/2023 in Misc

Case No. 02/2023 by the learned Sessions Court, West Sessions Division, Yupia, declaring the appellant as Juvenile on the date of commission of offence has not been challenged either by the State or the Complainant.

The appellant, by now, is stated to have spent 9 years, 1 month and 2 days of imprisonment as on today.

Since the appellant has been determined to be a Juvenile at the time the offence was committed vide Order, dated 18.08.2023, passed in I.A.(Crl.) No. 106/2023 in Misc Case No. 02/2023 by the learned Sessions Court, West Sessions Division, Yupia by providing an ample opportunity to the learned Public Prosecutor and the said Order, dated 18.08.2023 passed in I.A.(Crl.) No. 106/2023 in Misc Case No. 02/2023 by the learned Sessions Court, West Sessions Division, Yupia, determining the appellant to be a Juvenile has not been challenged either by the State or by the respondent no. 2, the informant, we hereby set aside the sentence of rigorous life imprisonment with a fine of Rs. 2,000/- with default stipulation passed by the learned Sessions Court, West Sessions Division, Yupia in Sessions Case No. 58/14(YPA), under Section 302 IPC, while upholding the conviction.

After the sentence Order, dated 13.03.2018, passed by the learned Sessions Court, West Sessions Division, Yupia in Sessions Case No. 58/14(YPA) having been set aside on the appellant being found to be a Juvenile by the learned Sessions Court, West Sessions Division, Yupia in the Order, dated 18.08.2023 passed in I.A.(Crl.) No. 106/2023 in Misc Case No. 02/2023, the next course, open to this Court, is to refer the matter to the concerned Juvenile Justice forum for passing of an appropriate order.

However, since the appellant is stated to have suffered 9 years, 1 month

and 2 days of imprisonment pursuant to the impugned sentence order, dated 13.03.2018, taking note of the Judgment of the Hon'ble Supreme Court in the case of *Dharambir Vs. State (NCT of Delhi) and Another* reported in (2010) 5 SCC 344 and a decision of this Court, in the case of *Mainul Haque Ahmed (MD.) Vs. State of Assam*, reported in 2022 (1) GLT 806, we are of the view that the appellant need not be referred to the concerned Juvenile Justice Forum for passing of any further order(s) and the appellant be set at liberty forthwith, if not required in any other case.

The appeal stands disposed of in terms above.

JUDGE

JUDGE

Comparing Assistant