

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.655 of 2012

Against the judgment of conviction and order of sentence dated 30.06.2012, passed by Bimal Kumar Sinha, Ad Hoc Additional Sessions Judge, III, Nawadah, in State of Bihar 63 of 2000/105 of 2005 arising out of Rajauli P.S. Case No. 134 of 1999, G.R. No. 1375 of 1999

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1. Vinod Kumar Choudhary, son of Nand Kishore Choudhary @ Lathi Choudhary, resident of village Phulbaria, P.S. Rajauli, district Nawada
 2. Kapil Kumar Choudhary, son of Tanik Choudhary, resident of village Jagdishpur Tiyari, P.S. Noorsarai, district Nalanda Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Sanjay Prasad, Adv.

For the Respondent : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 10-09-2015

Heard the learned counsel for the appellants and the State.

2. The appellants have been convicted for offences under Sections 366A/34 and 376/34 of the Penal Code and for both the offences the appellants have sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.5,000/- each and in default of payment of they have been sentenced to undergo simple imprisonment for six months.

3. During the hearing of the appeal a question of juvenility was raised and by order, dated 12.08.2014, the Juvenile Justice Board, Nawadah, was directed to complete the enquiry in accordance with law. A report of the Juvenile Justice Board has been received showing the appellants as juvenile on the date of occurrence, hence, it is submitted that the order of conviction though sustained, but, the sentence, recorded by the trial Court, may be stayed.

4. However, having regard to the fact that the appellants have been convicted and sentenced to undergo rigorous imprisonment for seven years. However, in view of this fact that appellants remained in jail for about three years and eight months, in all, i.e., from 30.06.2012 till date and further they had already remained in jail for about six months during the trial and the fact remained that they have already remain in jail for about three years and eight months. However, it is apparent that in view of the Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, a juvenile can remain in Special Home for a maximum period of three years and the appellants having undergone in detention for a period of three years and eight months, i.e., the appellants have already undergone more that the period of detention as provided under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, hence, in view of the provision contained in Rule 98 of the Juvenile Justice (Care and Protection of Children) Rule, 2007, the appellant may be ordered to be released as period of detention is more than the period provided under the Juvenile Justice (Care and Protection of Children) Act, 2000. This view finds support in decision reported in **(2010) 15 SCC, 83 (Ajay Kumar Vrs. State of Madhya Pradesh)**.

5. Hence, having regard to the facts and circumstances of the case, the order of conviction shall sustain, however, the order of sentence, passed by the Court below, shall deemed to have been effected and the appellants, above named, are ordered to be released forthwith, if

not wanted in any other case.

6. With this observation, this appeal is **disposed off**.

(Gopal Prasad, J)

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