

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL . REV. P. NO. 47 OF 2011

Smti. Ratna Das (Sarkar),
wife of Shri Nilmohan Sarkar,
resident of village – Kalikamura,
P.O. Mohanpur, P.S. Sidhai,
Sub-Division Agartala, District : West Tripura
.....Petitioner

Vs.

1. The State of Tripura
2. Shri Kanak Kanti Das,
son of Sri Kshitish Chandra Das,
resident of Village-Durgapur, Paitur Bazar,
P.O. & P.S. & Sub-Division : Kailashahar,
District : North Tripura
.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. Sri Somik Deb, Advocate Mr. S. Lodh, Advocate				
For the respondent No.1	:	Mr. A. Ghosh, P.P.				
For the respondent No.2	:	Mr. Sekhar Dutta, Advocate				
Date of hearing	:	07.08.2015 & 09.10.2015				
Date of judgment & order	:	16.12.2015				
Whether fit for reporting	:	<table border="1" style="display: inline-table; vertical-align: middle;"> <tr> <td style="padding: 2px 10px;">Yes</td> <td style="padding: 2px 10px;">No</td> </tr> <tr> <td style="text-align: center; padding: 2px 10px;">√</td> <td style="padding: 2px 10px;"></td> </tr> </table>	Yes	No	√	
Yes	No					
√						

JUDGMENT & ORDER

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. Sh. Rualhleithanga**, reported in **(2005) 3 GLR 598** 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**, reported in **(2005) 3 SCC 551**, **Babban Rai & Anr. Vs. State of Bihar**, reported in **(2008) AIR SCW 511**, **Vaneet Kumar Gupta alias Dharminder Vs. State of Punjab**, reported in **(2009) 17 SCC 587**, **Dharambir Vs. State (NCT of Delhi) & Anr.**, reported in **(2010) 5 SCC 344**, **Mohan Mali and Anr. Vs. State of Madhya Pradesh**, reported in **(2010) 6 SCC 669** and **Lakhan Lal Vs. State of Bihar**, reported in **(2011) 2 SCC 251**.

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 Vs 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. Vs. 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 Vs. 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.

JUDGE

Sabyasachi.B