

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.548 of 2015

Arising Out of PS.Case No. -17 Year- 2012 Thana -VALMIKINAGAR District-
WESTCHAMPARAN(BETTIAH)

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1. Umesh Guru aged about 21 years, Son of Late Bholi Guru Resident of
village - Daruwawari, P.S. Valmiki Nagar, District - East Champaran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Saket Tiwary

For the Respondent/s : Mr. A.Sharma(App)

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL**

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

10 11-07-2017

Heard Mr. Sanjeev Kumar for the sole appellant-
petitioner and Mr. Abhimanyu Sharma APP for the State.

The appellant, on trial, was held guilty under
Sections 302,307 of the Indian Penal Code and sentenced to
undergo R.I. for life under Sections 302 of the Indian Penal Code
besides imposition of fine with default clause. He was separately
sentenced under Section 307 of the Indian Penal Code and Section
27 of the Arms Act.

As per the prosecution case, the appellant along with
other was responsible for causing injury to the two injured(s) who,
in course of treatment, died. The learned Trial Court, on



appraisal of the evidence held the charges levelled against the appellant-petitioner duly proved.

During pendency of the appeal the present appellant, filed an Interlocutory Application being I.A. no. 1509 of 2016 claiming himself as a juvenile on the date of occurrence i.e. 03.05.2012. In the light of submissions advanced in support thereof, this Court vide an order dated 20.02.2017 directed the Juvenile Justice Board, West Champaran Bettiah (for short 'the Board') to hold an enquiry and record a finding on the claim of the appellant. Consequent upon the said order, an enquiry is stated to have been made by the Board in Misc. case no. 01 of 2017. On conclusion of the enquiry a report has been furnished to this Court which is placed on the record. We have perused the finding of the Board. The relevant part of the finding of the Board is extracted below:-

“उमेश गुरो पुत्र स्व० भोली गुरो को वाल्मिकीनगर थाना काण्ड संख्या – 17/2012 में घटना तिथि 03.05.2012 को विधि विवादित किशोर घोषित किया जाता है।

विधि विवादित किशोर की उम्र निर्धारण जाँच की कार्यवाही किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 व किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007 के अन्तर्गत की गई है।”

Learned counsel for the appellant-petitioner submits that the appellant is not challenging the judgment of conviction on merit. He refers to the provision contained in Section 15(1) of



the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act 2000') and submits that the maximum period for which a juvenile in conflict with law can be detained is 03 years. The appellant has remained in jail custody since 11.5.2012 i.e. for more than 05 years. He relied in this regard on a judgment of the Hon'ble Supreme Court in the case of ***Ashwani Kumar Saxena Vs. State of Madhya Pradesh*** since reported in **(2012)9 SCC 750** wherein a claim of juvenility was raised before the Hon'ble Supreme Court which was considered and the Court having found that the appellant-petitioner was juvenile on the date of occurrence set aside the order passed by the High Court and direct the Trial Court to first examine the question of juvenility as claimed by the appellant and after disposal of the claim made by the appellant that they were minor on the date of alleged occurrence. The Trial Court was directed to proceed with the trial thereafter.

In ***Darga Ram versus State of Rajasthan 2015 (1) PLJR 432(SC)***, in the context of similar/identical facts the Hon'ble Supreme Court having considered the submissions made at Bar in paragraph nos. 16 and 17 held as under:-

“16. In the totality of the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the appellant to be a juvenile as on the date of the occurrence no matter the



offence committed by him is heinous and but for the protection available to him under the Act the appellant may have deserved the severest punishment permissible under law. The fact that the appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail one who has been found guilty of rape and murder of an innocent young child.

17. In the result, this appeal succeeds but only in part and to the extent that while the conviction of the appellant for offences under Sections 302 and 376 of IPC is affirmed the sentence awarded to him shall stand set aside with a direction that the appellant shall be set free from prison unless required in connection with any other case.”

We may also notice a Division Bench judgment of this Court on this point rendered in the case *of Shamshad vs. State of Bihar 2015(3) PLJR 703*. On noticing that the appellant-petitioner was a juvenile in conflict with law, the Court held as under in paragraph nos. 111, 112, 113 and 114:-

“111. With regard to the above, it is of immense importance to note that the present petitioner has already served far more than maximum period of imprisonment, which Section 15 of the Act of 2000 has prescribed, inasmuch as Section 15 of the Act of 2000 prescribes three years of imprisonment as the maximum period to which a *juvenile in conflict with law* can be sentenced to.

112. In view of the above, it becomes crystal clear that since the petitioner is a *juvenile in conflict with law* within the meaning of Section 2(l) of the Act of 2000, no fruitful purpose will be served if his case is remanded to the State Government for passing appropriate order under Section 64 of the Act of 2000, when he has already served more than three years of imprisonment.

113. What logically follows from the above discussion is that the petitioner cannot be kept in prison any longer and must be set at liberty forthwith and the process of setting him at liberty cannot be



delayed.

114. In the result and for the foregoing reasons, this writ petition succeeds. While maintaining the conviction of the petitioner, we set aside the sentence of life imprisonment passed against him and direct that the petitioner, having served more than three years of imprisonment, be set at liberty forthwith.”

The counsel for the appellant has also urged that the amended provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 would not apply in the case of the present appellant in view of the express provision contained in Section 25 thereof.

Mr. Sharma, learned APP appearing for the State submits that under the provisions of the Act, 2000, no juvenile in conflict with law can be detained in custody for more than 03 years. If the counsel for the appellant is not challenging his conviction on merit and only prays for granting him relief with regard to the sentence then in view of the law settled by this Court and the Hon’ble Supreme Court, the appeal may be disposed of finally.

Having heard the counsel for the appellant and the State and on going through the relevant materials on record, we find from the report submitted by the Board that the sole appellant was a juvenile on the date of occurrence. No party has stated before us about any challenge made to the finding of the Board.



Consequently, the appeal succeeds only in part and to the extent that the conviction of the appellant for the offence under Sections 302, 307 of the IPC and Section 27 of the Arms Act awarded by the learned Trial Court is affirmed but the order of sentence dated 30.6.2014 passed against the appellant in Sessions Trial No. 611 of 2012 is set aside. The appellant shall be set free unless required in connection with any other case. The appeal is allowed in part.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

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