

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3305 of 2017

Arising Out of P.S. Case No. -30 Year- 2003 Thana -MAIRWA District- SIWAN

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Roshan Gond @ Raushan Kumar Gond, S/o Jagdish Gond, R/o
Village- Chitmath, P.S.- Mairwan, District- Siwan.

.... Appellant/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Sanat Kumar Mishra, Adv.

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 02-04-2018

The appellant/Roshan Gond @ Raushan Kumar
Gond has been convicted for the offences punishable under
Section 307 of the Indian Penal Code (*in short "the I.P.C."*)
and Section 27 of the Arms Act, 1959 (*in short "the Act"*)
by judgment dated 31.10.2017, passed by the learned
Additional Sessions Judge-Cum-Fast Track Court No.-II,
Siwan in Sessions Trial No. 393 of 2004, arising out of Mairwa
P.S. Case No. 30 of 2003 and by the order dated 07.11.2017,
he has been sentenced to undergo rigorous imprisonment for
10 years for the offence under Section 307 of the I.P.C. and



rigorous imprisonment for 2 years for the offence under Section 27 of the Act. The sentences have been ordered to run concurrently.

2. Before going into the merits of the case, it would be relevant here to state that before the judgment was pronounced by the learned Trial Court, an application was filed by the appellant before the Trial Court, intimating him that on the date of the occurrence, he was a juvenile. However, the Trial Court did not look into the matter and delivered the judgment, referred to above, and sentenced him as aforesaid.

3. Before this Court, after the filing of the appeal, a submission was made on behalf of the appellant that he was a minor/juvenile on the date of the occurrence. In support of the aforesaid submission, the appellant drew the attention of the Court to the registration receipt, marks-sheet of the Secondary School Examination, 2003 and the matriculation certificate.

4. A Bench of this Court *vide* order dated 08.01.2018, directed the court below to commence an inquiry with respect to the appellant as regards his juvenility, in terms of Section 7(A) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (*in short* "**the J.J. Act**"). It was directed that the said exercise must be completed within



a period of 2 months.

5. In pursuance of the aforesaid order of this Court, an inquiry was held and by order dated 19.02.2018, the Juvenile Justice Board, Siwan in Miscellaneous Case No. 01 of 2018, held the appellant to be less than 18 years of age on the date of the occurrence.

6. Since the appellant was a juvenile on the date of the occurrence, he could not have been tried with other adult persons and sentenced to a period more than 3 years.

7. Section 7(A) of the J.J. Act (*amended in the year 2006*) provides that whenever a claim of juvenility is raised before any Court and the Court is of the opinion that the concerned person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, taking such evidence as may be necessary, so as to determine the age of such person and shall record a finding whether the person concerned is a juvenile or a child or not, stating his age as nearly as possible. This plea could be raised before any Court and it would be recognized at any stage, even after the final disposal of the case and such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder, even if the juvenile had ceased to be a juvenile.



8. Sub-Clause (2) of Section 7(A) of the J.J. Act further mandates that if the Court finds a person to be a juvenile on the date of commission of the offence under sub-Section (1) of the J.J. Act, it shall forward the juvenile to the Juvenile Justice Board for passing appropriate order and the sentence, if any, passed by any Court, shall be deemed to have no effect.

9. Thus, the sentence of the appellant/ Roshan Gond @ Raushan Kumar Gond is, hereby, set-aside.

10. The case of the appellant/juvenile is remitted to the learned Juvenile Justice Board, Siwan in the same Miscellaneous Case No. 01 of 2018, to sentence the appellant/juvenile in accordance with the provisions of the J.J. Act.

11. The aforesaid order shall be passed within a period of 30 days from the date of receipt/production of a copy of this order.

12. Needless to say that, in the meanwhile, if the appellant/juvenile is in jail, he shall be sent to remand home.

13. The Juvenile Justice Board, Siwan shall also take into account, while sentencing the appellant/juvenile, that the occurrence took place in the year 2003 and that 15 years have passed by since the offence was committed.



14. The appeal is disposed of in terms of the aforesaid direction.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
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