

02 11.03.2021

Dd/aloke

CRA 96 of 2019
with
CRAN 1167 of 2019
with
IA No. CRAN 4 of 2020 (Old CRAN 741 of 2020)
With
IA No. CRAN 5 of 2020 (Old CRAN 1804 of 2020)
With
IA No. CRAN 6 of 2020 (Old CRAN 4113 of 2020)

In the matter of : **Raju Halder @ Halder**
... ...Appellant

Mr. Ankit Agarwala, adv.
Mr. Subir Debnath, adv.
Ms. Roma Roy, adv.
Mr. Vineet Ojha, adv.
....For the Appellant

Mr. Saswata Gopal Mukhopadhyay, ld. PP
Mr. Aniket Mitra, adv.
... ...For the State

1. The appellant is one among the two who are charge-sheeted for offences punishable under Sections 376D and other provisions of the Indian Penal Code; in short “IPC”; and certain provisions of the Protection of Children from Sexual Offences Act, 2012; in short “POCSO Act”. He stands convicted and sentenced to undergo rigorous imprisonment for life which, according to the impugned order, is meant as imprisonment for the remainder of that person’s natural life. This is handed down for the offence found to have been punishable under Section 376D of IPC and Section 6 of the POCSO Act. Penalty by way of fine of Rs. 2,00,000/- is also imposed.

2. We have heard the learned counsel for the appellant and the State.

3. Learned Advocate Ankit Agarwala, appearing on behalf of the appellant, argued that notwithstanding the specific

plea before the court below that he is a juvenile and is, therefore, not triable along with the co-accused; such issue was not focused upon or considered by the court below; and that, he was tried along with the co-accused who is not a juvenile. This plea is pithily founded on Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015; in short J.J. Act. Appellant counsel further argued that in the event of the plea that the appellant is a juvenile was to be considered in accordance with the provisions of the POCSO Act and the J.J. Act, the matter ought to have gone to the J.J. Board. He also argued that the procedure adopted by the court below in the matter of trial was wholly in violation of the laws, irregular and improper. He submitted that assessing the quality of materials on record, the position is that there is no legal evidence on record to inculcate the appellant who is one among the two accused persons.

4. Learned Public Prosecutor, Saswata Gopal Mukhopadhyay and learned Advocate Aniket Mitra, appearing on behalf of the State, points out that the J.J. Board had, during the pendency of the appeal, assessed the appellant as having the mental and physical ability to involve in the activity and of being conscious of its result, repercussion and consequence.

5. The date of occurrence is 16.12.2017. The Court of Session decided the case on 24.08.2018. The J.J. Board gave its opinion on 21.11.2019; based on, among other materials, the report of the medical examinations carried out on 18.11.2019 and 19.11.2019. These dates will disclose that within a timeframe of three months as enjoined by Section 14 of the J.J. Act, the appellant was not subjected to the process which ought to have been carried out in terms of that provision to determine the question of juvenility and to classify him in such manner

as could be done in terms of the J.J. Act, to be further proceeded with.

6. The assessment of the appellant by the J.J. Board on 21.11.2019, pending this appeal, definitely classifies him as a juvenile in terms of the provisions of the J.J. Act. The report of the Board also indicates that it could be a case where the appellant could be put to trial because he had been classified as one beyond 16 years and of having the physical and mental ability to commit the activity attributed to him and also being a person who understands the consequence of such action. But, most importantly, we need to notice that the assessment of the appellant by the J.J. Board was on 21.11.2019, while the date of occurrence is 16.12.2017 which is beyond time frame of three months as prescribed in sub-Section 3 of Section 14 of the J.J. Act. It makes no difference whether it is Section 14 or Section 15 of the J.J. Act, relating to heinous offence that would apply. We say so because with the passage of time, the appellant/accused no.1 had been deprived of his liberty, by being placed either in the correctional home or in the juvenile home; all such period taken together, being at least a couple of months beyond three years, which is the maximum period for which he could be kept in the correctional home even if he could be tried in terms of the provisions of the J.J. Act. That being so, even if we hold that the trial of the case insofar as it relates to the appellant is vitiated and was held illegally, irregularly and improperly, it would not lead to any practical result, if we were to simply separate the case insofar as it is against the appellant and let it go back to the jurisdictional Magistrate's Court which passed the order of committal to the Court of Session.

7. It would also be wholly unjustified to require the appellant to undergo a further process before the J.J. Board since the net result of any such proceeding could

bring on him nothing more than what he has already undergone, either in the correctional home or in the juvenile home. We are of the view that even if the appellant is found to have committed the activity attributed to him, he would have to be under the correctional jurisdiction under the J.J. Act, only for a maximum period of three years.

8. For the aforesaid reasons, we hold that the trial and conviction of the appellant is contrary to procedure established by law and is hence, vitiated. The resultant situation is not which can be rectified in view of the factors relating to the detention of the appellant in the correctional home or in the juvenile home as already noted hereinabove. Hence, we set aside the judgment and order of conviction and the sentence imposed upon the appellant/accused no. 1 and set him at liberty forthwith. The juvenile home will take steps to immediately release him upon receipt of communication of this order. This decision does not preclude any competent authority to deal with him if he is needed in any other matter in terms of law.

9. We clarify that this judgment does not result in any finding on the basis of appreciation of the evidence on record and in no manner affects the finding of guilt on the basis of evidence insofar as the accused no. 2, namely, Sujoy Sardar, in Special Case No. 56 of 2017 in the Court of Additional District and Sessions Judge, First Court, Sealdah, South 24-Parganas is concerned.

10. Accordingly, the appeal is allowed and the connected applications are disposed of.

[Thottathil B. Radhakrishnan, C.J]

[Aniruddha Roy, J.]