GAHC010212282015

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./200/2015

MD MAINUL HAQUE AHMED @ MAINUL HAQUE
S/O LATE KUTUBUDDIN AHMED, R/O VILL. CHIRAKHUNDI, P.O. and P.S. RANGIA, DIST. KAMRUP, ASSAM, PIN

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR.S K JAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT & ORDER (ORAL)

Date : 25-08-2021

(Suman Shyam, J)

Heard Mr. S.K. Jain, learned counsel for the appellant. We have also heard Ms. B. Bhuyan, learned Addl. P.P. Assam appearing for the State.

2. By the judgment and order dated 19-05-2015 passed by the learned Addl. Sessions Judge (FTC), Kamrup at Rangia in connection with Sessions Case No. 271/2010, the appellant Md. Mainul Haque Ahmed was convicted under Section 302 IPC for committing the murder of his sister-in-law *viz.* Fatema Bibi and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs. 1000/-. The judgment and order dated 19-05-2015 has been assailed by filing the instant appeal.

3. It appears from the record that during the pendency of the appeal, the appellant had, for the first time, taken the plea of juvenility and had filed I.A.(Crl.) No. 782/2017 arising out of Crl. A. No. 200/2015 making a prayer before this Court to declare him as "juvenile" within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the ground that on the date of the occurrence, i.e. on 13-04-1993, the appellant was aged below 14 years and therefore, was a "juvenile". The appellant had claimed that his date of birth was 18-12-1979. Taking note of the aforesaid plea raised by the appellant, this Court had passed order dated 04-12-2017 in I.A.(Crl.) No. 782/2017 directing the Addl. District and Sessions Judge (FTC), Kamrup at Rangia to conduct an enquiry regarding the plea of juvenility raised by the appellant in terms of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and thereafter, submit a report. Accordingly, the learned Addl. District and Sessions Judge had conducted an enquiry and submitted report dated 27-03-2018. As per the enquiry report dated 27-03-2018, the claim of the appellant that he was a "juvenile" on the date of occurrence was found to be correct.

4. Taking note of the enquiry report dated 27-03-2018, this Court had passed the

order dated 24-04-2018 in I.A.(Crl.) No. 782/2017 holding that as on the date of occurrence, the appellant was a "juvenile" within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

5. There is no wrangle at the bar that the finding recorded in the order dated 27-03-2018 as regards juvenility of the appellant, has in the meantime, attained finality in the eye of law. What, therefore, logically follows is that if the appellant was a "juvenile" on the date of occurrence, the learned Addl. District and Sessions Judge (FTC), Kamrup evidently did not have the jurisdiction under the law to try him for the charge framed under Section 302 IPC in connection with Rangia P.S. Case No. 116/1993.

6. In the case of ***Dharambir Vs. State (NCT of Delhi) & Anr.*** reported in ***(2010) 5 SCC 344*** similar question on juvenility of the appellant/ accused had arisen after the trial was concluded. The appellant therein was convicted under Section 302 IPC and sentenced to imprisonment for life and also to pay fine. When the matter went up to the Supreme Court, the plea of juvenility was raised. Under the Juvenile Justice Act, 1986 the appellant was not a juvenile on the date of occurrence but the court found that on the date of occurrence, the appellant had not completed 18 years and therefore, was a juvenile within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000. By taking note of the provision of the Act of 2000 as well as the Juvenile Justice (Care and Protection of Children) Rules, 2007, the Supreme Court had made the following observation in paragraph 15:-

> "*15. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of*

eighteen years on the date of commission of the offence even prior to 1-4-2001 would be treated as juvenile even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted. In the view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan."

7. In the case of ***Lakhan Lal Vs. State of Bihar*** and ***Pappu Lal @ Manoj Kr. Srivastava Vs. State of Bihar*** reported in ***(2011) 2 SCC 251*** the Hon'ble Supreme Court had the occasion to deal with a matter of similar nature. In that case also, the two appellants were tried by the learned Sessions Judge and convicted under Section 302 read with Section 34 of the IPC. However, the plea of juvenility was raised before the appellate court and on an enquiry, it turned out that the appellants were below 18 years on the date of occurrence. By relying on the earlier decision in the case of ***Dharambir (Supra)*** the Apex Court has made the following observation:-

"*23. Both the appellants have crossed the age of 40 years as at present and therefore, it will not be conducive to the environment in the special home and at any rate, they have undergone an actual period of sentence of more than three years the maximum period provided under Section 15 of the 2000 Act. In the circumstances, while sustaining the conviction of the appellants for the offences punishable under Section 302 read with Section 34 IPC, the sentence awarded to them are set aside. They are accordingly directed to be released forthwith. This view of ours to set aside the sentence is supported by the decision of this Court in Dhrambir."*

8. We have also noticed that prior to his release on bail by the order dated 24-04-2018 passed in I.A.(Crl.) No. 782/2017, the appellant had spent more than 02 years 11 months in jail. During the period of investigation, the petitioner was behind the bars for a period of 90 days and even during the course of the trial, the appellant was in jail custody for 52 days. If that be so, the appellant has evidently spent more than 03 years in judicial

custody in connection with the aforesaid proceeding. Moreover, going by his date of birth, today the appellant will be aged about 41 years and hence, sending him to a Juvenile home at this stage would not serve any practical purpose. In view of the decision of the Supreme Court in the case of ***Lakhan Lal (Supra)*** and having regard to the facts and circumstances of the case, we are of the view that the jail sentence awarded to the appellant by the impugned judgment and order dated 19-05-2015 be set aside and he be set free.

Ordered accordingly.

The appellant is directed to be set free.

The appeal stands disposed of accordingly.

JUDGE **JUDGE**

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Comparing Assistant