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**(2005) 05 GAU CK 0030**

**Gauhati High Court**

**Case No:** None

Lalbabu Tossa

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** May 3, 2005

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2007) 2 GLR 89

**Hon'ble Judges:** D. Biswas, Acting C.J.; P.G. Agarwal, J

**Bench:** Division Bench

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**Judgement**

P.G. Agarwal, J.

Heard Mr. G.N. Sahewalla, learned senior counsel for the appellant and also Mr. P. Bora, learned Public Prosecutor, Assam.

2. This appeal u/s 374 Cr.P.C. is directed against the judgment and order dated 10.2.2005 passed in Sessions Case No. 21 (s-s)/2003 by the learned Addl. Sessions Judge (F.T.C.) No. (1) Sivsagar whereby the accused appellant was convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000, in default, to further imprisonment for four years. Hence, the present appeal.

3. The prosecution case in brief is that on 17.6.2002 at about 3.30 PM the accused appellant caused the death of Krishna Tossa at Chinatukura Line in Naharhabi Tea Estate. In this case the appellant has challenged the conviction and sentence solely on the ground that the trial court has no jurisdiction to try this case as the accused appellant was a juvenility and he was required to be tried by a Juvenile Court. The accused appellant has pleaded the same before the learned trial court and in support of the same examined D.W. 1 and produced the school certificate, Ext. KA. The trial court, however, refused to accept the school certificate by a cryptic submission that it is not a reliable document. It is submitted that the accused

appellant has appeared in the HSLC Examination and admit card was a proper document in proof of age and, further, the accused appellant did not produce the admit card. The trial court refused to consider the plea of juvenility as defined in the Juvenile Justice Act.

4. Mr. G.N. Sahewalla, learned senior counsel has produced before us the original copy of the Admit Card No. 159486 issued by the Controller of Examinations, Board of Secondary Education, Assam whereby Shri Lalbabu Tossa, son of Shri Kandru Tossa was admitted to have appeared in the HSLC Examination in the year 2002 and his date of birth is recorded as September 1,1986.

5. As stated above, the incidence took place on 17.6.2002 and in view of the law settled by the Constitution Bench of the hon"ble Apex Court in Shri Pratap Singh v. State of Jharkhand in Criminal Appeal No. 10 of 2005, the relevant date for determining the age of the accused (juvenile) is the date of the offence and not the date when he is produced before the authority or in the court. In the present case, the new Act is applicable, namely - Juvenile Justices (Care and Protection of Children) Act, 2000 and the said Act came into force with effect from 1.4.2001. In the present case the alleged offence took place sometime in the year 2002. Under the 2000 Act, the age of the Juvenile is up to 18 years.

6. The law is well settled that a juvenile cannot be tried by a regular Sessions Court and in view of the above we held that the learned trial court exceeded its jurisdiction of trying the case of the accused appellant and, hence, the judgment of the learned trial court is set aside. The accused appellant is required to be tried by a competent Juvenile Justices Court. Let he be produced before the competent court for necessary direction.