
(2011) 08 CAL CK 0049

Calcutta High Court

Case No: C.R.A. No. 10 of 1998

Sajal Barui @ Papa

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 30, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2, 20, 3, 49, 7A
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 12, 98
- Juvenile Justice Act, 1986 - Section 16, 2, 3
- Penal Code, 1860 (IPC) - Section 109, 120B, 201, 302, 323

Citation: (2012) 2 CHN 788 : (2012) CriLJ 1763

Hon'ble Judges: J.N. Patel, J; Ashim Kumar Roy, J

Bench: Division Bench

Advocate: Sudipto Moitra and Lokesh Sharma, in CRA No. 10/1998 and Asish Sanyal, in CRA Nos. 11 and 12 of 1998, for the Appellant; Debasish Roy and Rajdeep Majumder, for the Respondent

Final Decision: Allowed

Judgement

Ashim Kumar Roy, J.

The Appellant Sajal Barui @ Papa in Criminal Appeal No. 10 of 1998, Ranjit Mondal @ Anil in Criminal Appeal No. 11 of 1998 and Debasish Dey @ Babu in Criminal Appeal No. 12 of 1998 challenged the judgement and order passed on September 23, 1997 by the learned Additional Sessions Judge, 3rd Court, Barasat, North 24-Parganas in connection with Sessions Trial Case No. 4 (9) 94, convicting each of them under Sections 302/34 read with Section 120B of the Indian Penal Code and sentencing to suffer imprisonment for life and to pay fine of Rs. 2,000/- in default to suffer rigorous imprisonment for one year. In the aforesaid appeals, the Appellants also challenged their conviction u/s 201 of the Indian Penal Code and sentence to suffer rigorous imprisonment for 5 years and to

pay a fine of Rs. 1,000/- and in default to suffer rigorous imprisonment for 6 months. In Criminal Appeal No. 12 of 1998 the Appellant Debasish Dey @ Babu also challenged his conviction u/s 411 of the Indian Penal Code and sentence to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for 3 months.

In the said trial three other accuseds, viz. Samar Saha @ Buro, Subrasil Roy @ Raja were found not guilty for the offences punishable under Sections 302/109 of the Indian Penal Code and were acquitted. However, accused Samar Saha @ Buro, Subrasil Roy @ Raja were found guilty under Sections 323/109 of the Indian Penal Code and sentenced to suffer simple imprisonment for one year and the accused Alok Saha @ Tato having found guilty u/s 411 of the Indian Penal Code, sentenced to suffer rigorous imprisonment for three years. No. appeal was however preferred by the aforesaid three accused persons against their conviction and sentence and they have already served out the sentence imposed upon them.

2. The case of the prosecution in short is as follows;

The deceased Subal Chandra Barui was a resident of a flat situated on the fourth floor of Subham Apartment, 5 N.C. Sengupta Sarani, Kolkata. The informant Dipankar Banerjee was also a resident of the said apartment. On November 23, 1993 at about 12 midnight the informant was called by the inmates of the two other flats situated at 4th floor of the said building. At once the informant rushed there and noticed a groaning sound was coming out from inside of the flat of Subal Barui and someone was crying for help from inside. The informant immediately reported the matter to the Dum Dum Police Station and police arrived there. Thereafter the door of the flat was broken and it was found the younger son of the Subal Barui, Sajal was lying tied with a rope on a chair near the T.V. Set at the drawing room. In another room the wife of Subal Barui was found dead sitting on a chair tied with rope and bed sheet. In the next room Subal Barui was found lying dead on the floor with bleeding injuries with his legs tied with a rope and in the same room his elder son Kajal Barui was also found lying dead on a chair. When on enquiry Sajal Barui reported that on the previous evening at about 7.30 p.m. he was watching T.V. with his mother when 7 unknown miscreants entered their flat and two of them were Punjabies. The said miscreants having entered their flat gagged him and tied him in a chair with a rope. Then his mother was taken in another room where she was tied with a rope and killed. He further reported at the time of the occurrence his father and elder brother were outside and as he became unconscious due to the assault he was not aware as to what happened to them.

3. The police after conclusion of investigation submitted charge-sheet under Sections 302/380/411/458/201/120B/34 of the Indian Penal Code against Sajal Barui @ Papa and five others, viz. Debasish Dey @ Babu, Subrasil Roy @ Raja, Ranajit Mondal @ Anil, Alok Saha @ Tato and Samar Saha.

4. The accused persons then were tried in the aforesaid Sessions Trial and by a judgement and order passed on January 10, 1996 the learned Additional Sessions Judge, Barasat, North 24-Parganas, convicted Sajal Barui @ Papa, Ranjit Mondal @ Anil and Debasish Dey @ Babu under Sections 302/34 of the Indian Penal Code. While the accused Sajal Barui @ Papa and Ranjit Mondal @ Anil were sentenced to death and to pay a fine of Rs. 2,000/-, in default to suffer rigorous imprisonment for one year, the accused Debasish Dey was sentenced to suffer imprisonment for life and to pay a fine of Rs. 2,000/-, in default to suffer rigorous imprisonment for one year. The accused Sajal Barui was also found guilty u/s 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for six months. The accused Ranjit Mondal was found guilty u/s 380 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for six months. The accused Debasish Dey was found guilty u/s 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for six months.

The accused Subrasil @ Raja Roy, Samar Saha @ Buro and Alok Saha @ Tato were found guilty u/s 302/109 of the Indian Penal Code and sentenced to suffer imprisonment for life and to a fine of Rs. 1,000/- and in default to suffer rigorous imprisonment for one year each. The accused Subrasil Roy @ Raja and Alok Saha @ Tato were also found guilty u/s 411 of the Indian Penal Code, whereas Subrasil Roy @ Raja and Ranjit Mondal @ Anil were found guilty u/s 380 of the Indian Penal Code.

5. When the aforesaid convicts in five separate appeals, viz. Criminal Appeal No. 13 of 1996, Criminal Appeal No. 45 of 1996, Criminal Appeal No. 35 of 1996, Criminal Appeal No. 60 of 1996 and Criminal Appeal No. 61 of 1996 challenged their conviction and sentence, whereas the proceedings for confirmation of death sentence was submitted before this Hon"ble High Court being the Death Reference No. 2 of 1996.

The said appeals and the Death Reference No. 2 of 1996 were heard together by a Division Bench of our High Court and by a judgement and order passed on January 31, 1997 the impugned order of conviction and sentence passed against the aforesaid accused persons was set aside on the ground that their examination u/s 313 of the Code of Criminal Procedure was not in accordance with law. The Trial Court was directed to proceed with the trial from the stage of examination of the accused u/s 313 Code of Criminal Procedure and conclude the trial.

6. Pursuant to the aforesaid order, the trial was held afresh from the stage of examination of the accused u/s 313 of the Code of Criminal Procedure and the impugned order of conviction and sentence has been passed.

7. Now appearing in support of Criminal Appeal No. 10 of 1998 Mr. Sudipto Moitra and in support of Criminal Appeal No. 11 of 1998 and Criminal Appeal No. 12 of 1998, Mr. Asish

Sanyal submitted before us, although the impugned order of conviction and sentence cannot in any way be sustained as the same suffers from serious infirmities both in law and facts but they are challenging the same solely on the ground that the Trial Court having come to a definite conclusion that on the date of the alleged incident the Appellants were below the age of 18 years, they ought to be held "juvenile in conflict with law" in terms of Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and be dealt with according to the provisions of the said statute, consequently the impugned order of conviction and sentence being passed in manifest contravention of the mandate of the said statute the same is wholly illegal and without jurisdiction and on this ground alone is liable to be set aside.

8. In support of such contention the learned Counsel for the Appellants draws our attention to the findings of the Trial Court at page 1244 of the paper book, from the judgement and order passed on January 10, 1996 in connection with the aforesaid trial and submitted that as a claim of juvenility was raised by the Appellant Sajal Barui in his examination u/s 313 of the Code of Criminal Procedure, a regular Enquiry Case No. 1/95 was started and after examination of witnesses and perusal of documents, the Trial Court came to a definite conclusion that the date of birth of the said Appellant was December 15, 1976 and accordingly on the date of the alleged incident, i.e. on 22/23.11.1993 he was three weeks less than 17 years.

Similarly, the Trial Court has also found the prosecution having examined witnesses and producing the Admission Registrar of the school proved that the date of birth of the Appellant Debasish was January 14, 1977, therefore he was aged about 16 years 10 months and 8 days on the date of the alleged incident and the date of birth of the Appellant Ranjit Mondal was January 22, 1976, therefore he was aged about 17 years 10 months on the date of the occurrence.

9. On the other hand, the learned Public Prosecutor Mr. Debasish Roy in his usual fairness conceded to the submissions made on the behalf of the Appellants. Mr. Roy submitted it is from the evidence adduced by the prosecution it is proved that on the date of the alleged incident the Appellants were below the age of 18 years and were therefore "Juvenile in conflict with law" and accordingly they are entitled to the benefit of the said legislation and the sentence of imprisonment is completely illegal.

10. In this connection we find the ratio of both the decisions relied upon by the learned Public Prosecutor in the case of [Hari Ram Vs. State of Rajasthan and Another](#), and in the case of [Eerati Laxman Vs. State of A.P.](#), are squarely applicable in the facts and circumstances of the case in hand. The relevant observations of the Apex Court in the aforesaid cases are quoted below;

In this regard the observations of the Apex Court in Paragraphs 22, 23, 24, 25, 26 and 40 in the case of Hari Ram v. State of Rajasthan and Anr. (supra) would be sufficient to set at rest the question raised before us.

22. While considering the first question, the Constitution Bench had occasion to consider the decision of the three Judge Bench in Umesh Chandra's case (supra), wherein it was held that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of occurrence and not the date of trial. Consequently, the decision in Arnit Das's case (supra) was over-ruled and the view taken in Umesh Chandra's case (supra) was declared to be the correct law. On the second point, after considering the provisions of Sections 3 and 20 of the Juvenile Justice Act, 2000, along with the definition of "juvenile" in Section 2(k) of the Juvenile Justice Act, 2000, as contrasted with the definition of a male juvenile in Section 2(h) of the 1986 Act, the majority view was that the 2000 Act would be applicable to a proceeding in any Court/Authority initiated under the 1986 Act which is pending when the 2000 Act came into force and the person had not completed 18 years of age on 1.4.2001. In other words, a male offender, who was being proceeded with in any Court/Authority initiated under the 1986 Act and had not completed the age of 18 years on 1.4.2001, would be governed by the provisions of Juvenile Justice Act, 2000.

23. In his concurring judgment, S.B. Sinha, J., while considering the provisions of Section 20 of the Juvenile Justice Act, 2000, observed that for the purpose of attracting Section 20 it had to be established that (i) on the date of coming into force the proceedings in which the Petitioner was accused was pending; and (ii) on that day he was below the age of 18 years. The unanimous view of the Constitution Bench was that the provisions of the Juvenile Justice Act, 2000, have prospective effect and not retrospective effect, except to cover cases where though the male offender was above 16 years of age at the time of commission of the offence, he was below 18 years of age as on 1.4.2001. Consequently, the said Act would cover earlier cases only where a person had not completed the age of 18 years on the date of its commencement and not otherwise.

24. The said decision in Pratap Singh's case (supra) led to the substitution of Section 2(l) and the introduction of Section 7A of the Act and the subsequent introduction of Rule 12 in the Juvenile Justice Rules, 2007, and the amendment of Section 20 of the Act.

25. Read with Sections 2(k), 2(l), 7A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the Section most relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1st April, 2001, when the Juvenile Justice Act, 2000, came into force. The same is, accordingly, reproduced hereinbelow:

20. Special provision in respect of pending cases. - Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry

under this Act that a juvenile has committed the offence.

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. - In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]

26. The Proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1st April, 2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of Clause (1) of Section 2, even if the juvenile ceased to be a juvenile on or before 1st April, 2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact Section 20 enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

40. In the instant case, the Appellant was arrested on 30.11.1998 when the 1986 Act was in force and under Clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect. However, as indicated hereinbefore after the decision in Pratap Singh's case (supra), Section 2(l) was amended to define a juvenile in conflict with law to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence; Section 7A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000. Section 7A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of

commencement of the Act. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

11. In a very recent decision in the case of Dharambir v. State (NCT of Delhi) and Anr. reported in 2010 SCC (Cri) 1274, the Apex Court held as follows in paragraphs 11 and 15;

11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.

15. It is, thus, manifest from the conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the 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 juveniles 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.

12. We have given our anxious and thoughtful consideration to the submissions made on behalf of the parties. There is No. dispute that on the date of the alleged occurrence, i.e. on November 23, 1993 all the three Appellants, now before us, were below the age of 18 years, therefore according to the provisions of Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, they were "Juvenile in conflict with law" and in terms of explanation to Section 20 of the said Act, the Appellants ought to be treated as "Juvenile in conflict with law" although at the time of the commission of the offence neither the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted nor the provisions of Section 2(l) was brought into the statute book and this field was governed by the Juvenile Justice Act, 1986. Now for the reasons stated above, the Appellants are to be treated as the "juvenile in conflict with law" on the date of commission of the alleged offence, even if they are found to have committed an offence but in view of the mandate of Section 16 of the said Act, imprisonment for any term which may extend to imprisonment for life or committed to prison in default to payment of fine is absolutely illegal and without jurisdiction. We, therefore, set aside the sentence imposed against the Appellants.

This Court has been informed that the Appellants were detained in jail for a period which is more than the maximum period for which a "Juvenile in conflict with law" may be confined to a Special Home, accordingly, it is directed if the Appellants are still in jail and not wanted with any other case, they shall be released from jail forthwith.

All the three appeals are thus stands allowed to the extent as above.

The Office is directed to communicate this order to the Trial Court and send down the records at once.

Criminal Section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.

I agree.