(2005) 07 CAL CK 0032

Calcutta High Court

Case No: C.R.A. No. 164 of 2001

Prem Das alias Prema		APPELLANT
	Vs	
The State of West Bengal		RESPONDENT

Date of Decision: July 27, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 251, 428
- Juvenile Justice Act, 1986 - Section 21, 22, 22(1), 22(2), 45
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2006) 1 CALLT 142

Hon'ble Judges: Pranab Kumar Deb, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Jharna Biswas, for the Appellant;Kazi Safiullah, R.K. Ghosal and Sofia Begam, for the Respondent

Final Decision: Allowed

Judgement

Alok Kumar Basu, J.

The present appellant was juvenile at the time of commission of the offence and when he was produced under arrest after starting of investigation, he was adjudged as juvenile delinquent and his entire trial, therefore, commenced before the Court of Metropolitan Magistrate in charge of Juvenile Court, Sector-I, Salt Lake City, Calcutta.

2. The learned Metropolitan Magistrate initiated the case against the juvenile delinquent under case No. TR 14 of 2000 of his file and after conclusion of trial, the learned Magistrate sentenced the juvenile delinquent to suffer detention from life in the safe custody subject to set off as provided in section 428 of the Code of Criminal Procedure.

3. Before dealing with several questions of fact and law raised in connection with hearing of this appeal preferred by the juvenile delinquent, we may record the

prosecution case briefly.

4. The prosecution case in a nutshell was that on 19.12.1999 on receipt of a telephonic message, S.I. H.K. Rauth of Amherst Street P.S. recorded a gunny bag in front of premises No. 121 Keshab Chandra Sen Street containing a dead body. On opening the gunny bag, a dead body of an elderly person was found with several injuries on his abdomen, both hands and his face was also disfigured.

5. In course of investigation, identity of the dead body was disclosed to be that of one Bagula Majhi, a porter of Posta market who used to spend his night in a room of Baladeb Das at 121/H/3 Keshab Chandra Sen Street.

6. S.I. H.K. Rauth, on recovery of the dead body and after establishment of identity of the dead body, started suo motu FIR u/s 302/201 of the IPC and in the course of investigation, it was detected that said Bagula Majhi while staying in the room of Baladeb Das, handed over his earnings amounting to Rs. 10,000/- to one Ranjit Das @ Mintu and as Bagula Majhi claimed that money, said Mintu along with his friends and with the direct help of the present appellant committed murder of Bagula by strangulation and thereafter assaulted him with a knife. Ranjit Das @ Mintu thereafter disposed of the dead body putting the same inside a gunny bag.

7. The investigation of the case subsequently was handed over to the homicidal squad of Detective Department of Lalbazar and S.I. Sushanta Dhar as the investigating officer completed the investigation and ultimately submitted charge sheet under sections 302/201/34 of the IPC against the accused persons including the present juvenile delinquent.

8. In course of trial, the delinquent was examined u/s 251 of the Cr PC as part of the trial procedure prescribed for the juvenile under the Juvenile Justice Act, 1986.

9. The prosecution examined 15 witnesses and also produced different documents in the form of FIR, post mortem report, inquest report, seizure lists and report of the FSL etc. The prosecution also produced different material exhibits in the form of photographs, knife and wearing apparels of the deceased.

10. The learned Metropolitan Magistrate, on perusal of the prosecution evidence and mainly relying on the testimony of PW 7 who was the eye witness of the gruesome murder of the deceased in the room of Baladeb Das and other circumstantial evidence in the form of recovery of knife at the instance of the present appellant, held the appellant guilty of the offence of murder of Bagula Majhi, but, the learned Magistrate did not find sufficient evidence to hold the appellant guilty of the offence for causing disappearance of evidence of murder and accordingly, the appellant was convicted u/s 302/34 of the IPC.

11. The learned Magistrate, considering the report of the probation officer, was of the view that the juvenile could not be discharged after advise or admonition or could not be sent to a special home as provided in section 21 of the Juvenile Justice

Act, 1986 and he was of the view that considering the nature of the offence committed by the juvenile, he must be kept in safe custody in such place and manner as the State Government things fit under provision of section 22(2) of the Act and accordingly, the learned Magistrate sentenced the juvenile to suffer detention for life in such safe custody subject to set off.

12. Appearing for the appellant before us Jharna Biswas, the learned advocate for the appellant has made two-fold submissions, first, challenging the order of conviction and finally, challenging the legality and propriety of the order of sentence passed by the learned Trial Court.

13. The learned advocate for the appellant submits on the question of conviction that there was insufficient evidence to hold the juvenile guilty of the order u/s 302/34 of the IPC and the learned advocate submits that the Trial Court ought not have placed reliance on the testimony of PW 7 and the Trial Court should have placed reliance on the testimony of father of the juvenile who was examined as DW 1 to hold that the juvenile was absent from the place of occurrence at the relevant time.

14. On the question of conviction, the learned advocate contends that on close examination of section 21 and section 22 of the Juvenile Justice Act it would appear that the learned Trial Court had no authority under the act to pass a sentence of detention for life in safe custody and the learned Trial Court should have passed an order for detention maximum for the period of three years or till the juvenile attains the age of 18 years. The learned advocate submits that in this case the juvenile had already crossed the age of 21 and naturally, he cannot be detained in safe custody any longer and he must be set at liberty forthwith from the safe custody.

15. The learned PP on behalf of the State respondent submits that from the evidence available from record of the Trial Court it would appear that there were sufficient materials both in the form of direct as well as circumstantial evidence to hold conclusively that the present appellant played an active part in commission of murder of the victim and hence, there is no merit in the contention of the appellant challenging the order of conviction.

16. The learned PP submits that the appellant was found guilty of a heinous murder along with some adult persons and when the Trial Court found no difficulty in convicting the appellant for commission of the murder, the appellant was rightly sentenced for detention for life in safe custody as his release would be a total menace for the society and also for the inmates of any special home. The learned PP submits with reference to section 45 of the Act that having regard to the nature of the crime committed by the juvenile, there appears to legal bar to detain the juvenile in safe custody for life.

17. We have perused the evidence on record carefully and we have also considered submissions of both the learned advocate for the juvenile appellant and also for the

State respondent.

18. On careful examination of the evidence on records, particularly, the evidence of PW 7 who was an eyewitness to the occurrence, we find that the appellant took an active part in commission of murder of the victim taken place in the room Baladeb Das. The statement of PW 7 was sufficiently corroborated from the surrounding fact and circumstances as revealed from the deposition of several witnesses examined by the prosecution and that apart, the recovery of the knife used for causing several injuries on the person of the deceased at the instance of the appellant lends sufficient support to the prosecution case against the appellant.

19. From the evidence of PW 7 and other witnesses we find that on the fateful night victim Bagula Majhi was in the room occupied by the present appellant along with PW 7 and in that night the appellant allowed the other accused persons to enter inside the room and thereafter with the help of the appellant, other accused persons committed murder of Bagula Majhi by strangulation when Bagula Majhi was sleeping. The accused persons thereafter inflicted several injuries on the person of Bagula Majhi and even disfigured his face brutally. We find from evidence of PW 7 that appellant was all along present and he actively participated in the commission of the murder. The fact of recovery of the knife at the instance of the appellant during investigation has been well proved by the witnesses to the seizure and by production of the knife itself and this recovery of the weapon at the instance of the appellant lends further support to the prosecution case that appellant was a part of the sinister design and he was also instrument in execution of the crime.

20. Thus, having regard to the evidence on record which appears to be convincing and trustworthy, we find no difficulty to reject the contention of the appellant challenging the order of conviction.

21. Now, we come to the crucial question as raised by the learned advocate for the appellant regarding the legality of the order of sentence passed against the appellant.

22. There is no dispute over the issue that appellant was juvenile within the meaning of the Juvenile Justice Act, 1986 at the time of commission of the offence and it is now well established principle of law that the determining factor for ascertaining the age of a juvenile regarding commission of an offence would be the age at the time of commission of the offence and to substantiate this point, we may refer to the five Bench judgment of the Hon''ble Supreme Court as reported in 2005 AIR SCW 3088.

23. It appears from impugned judgment of the Trial Court that the appellant faced the trial as a juvenile and the Trial Court recorded the sentence treating the appellant as juvenile within the meaning of the Act. Now, the question would be what should have been the proper sentence to be awarded against the juvenile after conclusion of trial and after holding the juvenile guilty of the offence u/s 302/34 of

the IPC.

24. Section 22 of the Act clearly lays down "notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent juvenile shall be sentenced to death or imprisonment or committed to prison in default of payment of fine or in default of furnishing security."

25. The provision of section 22, however, indicates that where a juvenile has attained the age of 14 years and has committed an offence and the juvenile Court is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home or that none of the measures provided under this Act is suitable or sufficient, the juvenile Court, may order the delinquent juvenile to be kept in safe custody in such place and manner as it things proper and shall report the case for the orders of the State Government.

26. From the sentence recorded by the learned Trial Court it appears that the Trial Court decided to sentence the juvenile under the provision of sub-section 2 of section 22, as having regard to the nature of the crime committed by the juvenile, the learned Trial Court did not fit to proper and sufficient to make any other order u/s 21 of the Act.

27. The learned advocate for the appellant contends that there is nothing in provision of sub-section 2 of section 22 empowering the Magistrate to sentence the juvenile for detention for life and that apart, the learned Magistrate was required to report the matter for order of the State Government for execution of this sentence order. The learned advocate for the appellant contends that the present sentence order appears to be bad in law since neither the learned Trial Court reported the matter to the State Government nor the learned Trial Court followed the prohibitory clause of section 22(1) of the Act.

28. We have carefully examined both sections 21 and 22 of the Act in its entirety and it appears that where having regard to the heinous nature of the crime committed by the juvenile, the Trial Court does not propose to pass any order u/s 21 of the Act, the Trial Court may pass the order for detention of the juvenile in safe custody following the provision of sub-section 2 of section 22, but the Trial Court must report the matter to the State Government for fixing up a place as safe custody.

29. In this particular case, the Trial Court before recording the sentence did not refer the matter to the State Government and this was in violation of the mandatory provision of the Act.

30. The Trial Court in this case sentenced the juvenile to suffer detention for life and in our considered view, having regard to section 21 read with section 22(1) of the Act, the Trial Court was not authorised to pass such a sentence of detention for life

in case of a juvenile.

31. We find from a Full Bench decision of the Patna High Court in the case of Krishna Bhagwan Vs. State of Bihar, that a similar question came up for consideration before the full Court as to whether under the provisions of Bihar Children Act which were similar in its scope and application like the Juvenile Justice Act, 1986, a juvenile can be sentenced to suffer detention in safe custody for more than three years and the Full Bench at para 12 of the judgment after discussing sections 21 and 22 of the Juvenile Justice Act along with sub-section 2 of section 5 of the said act, came to the observation that the farmers of the Act should have made more specific provision indicating as to normally what should be the period of detention of a juvenile in safe custody and in absence of such a specific provision, having regard to the object of the act itself and the liberal approach introduced in the act it has to be held that a juvenile cannot be detained exceeding three years in safe custody even if he is convicted for offence of a heinous character.

32. Thus, after giving our anxious deliberations to the provision of sections 21 and 22 of the Act and keeping in mind the ratio of decision of the Krishna Bhagawan v. The State of Bihar (supra), we are of the view that the learned Trial Court committed double error by passing his sentence order, first, without reporting the matter to the State Government and second by sentencing the juvenile to suffer life detention in safe custody.

33. Accordingly, we find merit in the contention of the learned advocate of the appellant so far the question of sentence is concerned.

34. We, therefore, while upholding the order of conviction recorded against the juvenile, are inclined to set aside the order of sentence which is against the statutory provision.

35. As the appellant has already attained the age of 18 years and he has already suffered detention of more than three years in safe custody, we direct for immediate release of the juvenile from the safe custody if he is not wanted in connection with any other case.

36. The appeal is, therefore, allowed in the manner as indicated above and let a copy of this judgment and order be forwarded to the Superintendent of the institution where the juvenile has been detained in safe custody for his immediate release, if he is not wanted in connection with any other case.

Send a copy of this judgment and order along with LCR sent to the Trial Court forthwith for information and further guidance.

Xerox copy of this judgment be delivered to both sides free of costs at the earliest considering the importance of the issue involved.

Pranab Kumar Deb, J.

I agree.