

Thirumoorthy Vs. State Represented By The Inspector Of Police

Thirumoorthy Vs. State Represented By The Inspector Of Police

SooperKanoon Citation : sooperkanoon.com/1230979

Court : Supreme Court of India

Decided On : Mar-22-2024

Judge : Hon'Ble Mr. Justice B.R. Gavai Hon'Ble Mr. Justice Sandeep Mehta

Appeal No. : Crl.A. No.-001773-001773 - 2024

Appellant : Thirumoorthy

Respondent : State Represented By The Inspector Of Police

Advocate for Pet/Ap. : S. JANANI ____

Judgement :

REPORTABLE 2024 INSC247IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO(S). OF2024(Arising out of SLP(Crl.) No(s). 1936 of 2023) THIRUMOORTHY .APPELLANT(S) VERSUS STATE REPRESENTED BY THE INSPECTOR OF POLICE RESPONDENT(S)

JUDGMENT

Mehta, J.

1. Leave granted.

2. This appeal takes exception to the judgment dated 15th April, 2021, passed by the learned Single Judge of the High Court of Judicature at Madras dismissing the

criminal appeal filed by the appellant herein under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter being referred to as Cr PC) and affirming the conviction of the appellant and sentences awarded to him vide judgment and order dated 18th February, 2019, passed by the Court of Sessions Judge, Mahila Court, Salem (hereinafter being referred to as the trial Court) in Special Sessions Case No.1 79 of 2016. By the said judgment and order, learned trial Court convicted and sentenced the appellant as below: - Provision under Sentence which convicted Section 363 IPC Sentenced to undergo 07 years rigorous imprisonment. Section 342 IPC Sentenced to undergo 01 years rigorous imprisonment. Section 6 POCSO Act Sentenced to undergo 10 years rigorous imprisonment. Section 302 IPC Sentenced to undergo 10 years rigorous imprisonment. Section 201 read with 302 Sentenced to undergo 07 years IPC rigorous imprisonment.

3. The trial Court in para 96 of its judgment held as under: - 96. Accused is now 19 years 2 months old. Therefore, according to Section 20 Juvenile Justice (Care and Protection of Children Act), Juvenile in conflict with law shall be kept in a safe place in Chengalpattu Juvenile Reform School till the age of 21 years. After that, the Probation Officer should evaluate the reformation of the said child and send a periodic report about it to this Court. After the completion of 21 years, the said child shall be produced in this Court and after evaluating whether the child has reformed, became a child who can contribute to the society, the remaining sentence may be reduced and released, or if the child is not reformed, the remaining sentence should be spent in jail after the child reaches the age of 21, considering the report of the Probation Officer and the progress records. The decision will be based on the discipline that the child has achieved and his behaviour.

4. Brief facts relevant and essential for disposal of the instant appeal are noted hereinbelow.

5. The victim Ms. D, being the daughter of the first informant- Mr. G(PW-1) aged 6 years went missing in the evening of 2nd July, 2016. Mr. G (PW-1) lodged a complaint at P.S. Kolathur, District 2 Salem on 3rd July, 2016 at 7 o'clock in the

morning alleging, inter alia that he had taken his daughter(victim) to a shop on the previous evening at around 6 o clock and from there, he asked the child to return home. However, when he reached his house half an hour later and made an inquiry from his wife, he was told that the child had not returned by then. A search was made in the locality but the child could not be traced out. Based on the said complaint, Crime No.174 of 2016 was registered and investigation was undertaken by S. Viswanathan, Inspector of Police (PW-25).

6. The Investigating Officer (PW-25) recorded the statements of Mylaswamy (PW-10) and Irusappan (PW-11) who stated that they had seen the accused going into the compound of his house with the child victim being the daughter of the first informant-Mr. G (PW-1). On this, the needle of suspicion pointed towards the accused-appellant who was apprehended from his house by the Investigating Officer (PW-25) while he was trying to run away. The accused was interrogated in presence of Mr. Arivazhagan, Village Administrative Officer (PW-15) and his assistant Muthappan.

7. It is alleged that the accused confessed to his guilt and his admission was recorded in memo (Ex. P-20) and acting in furtherance thereof, the dead body of Ms. D was found concealed in a wide-mouthed aluminium vessel lying in the prayer room of the house of the accused. The requisite spot inspection proceedings were undertaken and the dead body of the child victim was sent to the Salem Government Mohan Kumaramangalam Medical College Hospital for conducting post mortem. The post mortem report (Ex. P-7) and final opinion of Doctor (Ex. P-8) were received indicating that the death of the victim was homicidal in nature having being caused by asphyxiation due to compression of neck along with injuries to genitalia. Some incised wounds were also found on the body of the victim. Incriminating articles viz., clothes of the accused, a blade, etc. were recovered from the house of accused.

8. Right at the inception of investigation, the Investigating Officer(PW-25) had gathered information to the effect that the accused was a juvenile since his date of birth recorded in school documents is 30th May, 2000. Thus indisputably, the accused was a Child in Conflict with Law(in short CICL) as provided under Section

2(13) of the Juvenile Justice(Care and Protection of Children) Act, 2015 (hereinafter being referred to as the JJ Act) and the proceedings were required to be conducted in accordance with the mandatory procedure prescribed under the JJ Act. In spite of 4 thereof, charge sheet against the accused was filed directly before the Sessions Court (portrayed to be a designated Childrens Court, as per the counter affidavit filed by the State in the SLP).

9. Charges were framed against the accused who pleaded not guilty and claimed trial. The prosecution examined 25 witnesses and exhibited 35 documents and 10 material objects to prove its case. The accused was questioned under Section 313(1)(b) of Cr PC and was confronted with the circumstances appearing against him in the prosecution case. He denied the allegations levelled against him and claimed to be innocent. However, neither oral nor documentary evidence was led in defence. The trial Court proceeded to convict and sentence the accused as mentioned above, vide judgment and order dated 18th February, 2019.

10. The mother of the accused appellant filed a petition before the Special Court, POCSO Act Cases, Salem praying that the sentence of her son may be reduced and he may be considered for early release in view of his good behaviour.

11. The Special Court, POCSO Act Cases, Salem held an inquiry; conducted psychological evaluation of the accused; procured reports from the Vellore District Social Security Department Probation Officer and Probation Officer of Government Special 5 Home as well as the individual evaluation report of the accused and after analysing the above reports, proceeded to dismiss the application filed by the mother of the accused appellant vide order dated 29th January, 2021.

12. Being aggrieved by his conviction and the sentences awarded by the trial Court, the accused appellant preferred an appeal being CRLA No.451 of 2019 before the High Court of Judicature at Madras which came to be rejected vide impugned judgment dated 15th April, 2021. Hence this appeal by special leave.

13. Ms. S. Janani, learned counsel representing the accused appellant vehemently urged that admittedly the accused appellant was a CICL on the date of the incident since his date of birth as recorded in the school documents is 30th May, 2000. She

contended that the entire series of events commencing from the arrest of the accused appellant; the manner in which the investigation was conducted; the filing of the charge sheet in the Sessions Court; the procedure of trial right up to the conviction and sentencing of the accused appellant is vitiated as the mandatory procedure provided under the JJ Act was not followed and was rather blatantly flouted. It was submitted that the police official who filed the charge sheet was not having the authority to 6 conduct investigation because investigation into an offence allegedly committed by CICL has to be undertaken by the Special Juvenile Police Unit(SJPU) constituted under Section 107(2) of the JJ Act by the concerned State Government.

14. She urged that Section 3(1) provides for the principle of presumption of innocence, but the said provision was totally ignored in conducting the prosecution of the accused appellant and hence the entire trial is vitiated.

15. It was further submitted that the Sessions Judge who conducted trial was not designated as a Childrens Court and thus, the trial of the accused appellant is vitiated. Without prejudice to this submission, learned counsel submitted that even assuming that the Sessions Court had been designated as a Childrens Court, the accused appellant could not have been tried by the said Court without preliminary assessment being conducted by the Juvenile Justice Board(hereinafter being referred to as Board) as postulated under Section 15 of the JJ Act. The section mandates an enquiry in form of preliminary assessment to be conducted by the Board wherein the CICL has a right to participate. Upon conclusion of enquiry, the Board has to pass an order under Section 18(3) to the effect that there is a need to try the child as an 7 adult and only thereafter, the Board can transfer the case to the Childrens Court for trial. The CICL has been given a right to appeal against such order by virtue of Section 101(2) of the JJ Act. Even after the transfer of case under Section 15, the Childrens Court is required to apply its own independent mind to find out whether there is a genuine need for trial of the CICL as an adult as provided by Section 19(1)(i) of the JJ Act. However, none of these mandatory requirements were complied with and thus, the trial is vitiated.

16. Referring to the alleged confession of the accused appellant, the learned counsel criticised the manner in which the investigation was conducted and submitted that the confession recorded in presence of the police officer could not have been allowed to be exhibited and admitted in evidence. She submitted that the trial Court, not only allowed the confession to be exhibited but also placed implicit reliance upon it basing the conviction of the accused appellant on such inadmissible piece of evidence. The recording of confession of a CICL and placing implicit reliance thereupon is contrary to the general principles laid out under Section 3 of the JJ Act which provides the general principles to be followed in the administration of the Act. 8

17. It was further urged that (PW-10) and (PW-11) whose depositions have been relied upon to constitute the circumstance of last seen are as a matter of fact, totally unreliable witnesses. Had these witnesses seen the child being taken away by the accused, then their natural reaction would have been to promptly inform the child's father, the informant Mr. G. (PW-1) about this important circumstance and the same would definitely have been incorporated in the FIR which was lodged on the next day of the incident.

18. It was also contended that the factum of recovery of the dead body from the aluminium vessel preceded by the disclosure statement of the accused appellant has not been proved by reliable evidence and hence, there does not exist cogent and convincing circumstantial evidence on the record so as to establish the guilt of the accused appellant.

19. On these counts, learned counsel for the appellant implored the Court to accept the appeal and set aside the impugned judgment and sought acquittal for the accused appellant.

20. Learned counsel representing the State, vehemently and fervently opposed the submissions advanced by the appellants counsel. It was submitted that looking to the gruesome nature of the crime, the entire investigation and trial cannot be held to be vitiated simply on account of irregularity in the procedure of conducting investigation and trial. The Sessions Court which conducted the trial had been designated as a Childrens Court. The trial Court as well as the High Court have

given due consideration to the fact that the accused appellant was a juvenile on the date of commission of the crime and accordingly, the sentence which has been awarded to the accused appellant is commensurate with the provisions of the JJ Act. Not only this, the trial Court undertook an exhaustive exercise for mental and psychological assessment of the accused appellant after recording his conviction and only after receiving an individual care plan had quantified the sentences to be awarded to the accused which are strictly within the framework of the JJ Act.

21. In support of his contentions, learned counsel for the State placed reliance on judgments rendered by this Court in the cases of Karan alias Fatiya v. State of Madhya Pradesh¹ and Pawan Kumar v. State of Uttar Pradesh & Ors². He contended that the 1 (2023) 5 SCC5042 2023 SCC OnLine SC149210 impugned judgment does not warrant any interference by this Court.

22. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the judgments on record.

23. The fact regarding the accused appellant being a CICL on the date of the incident, i.e., 2nd July, 2016 is not in dispute because the date of birth of the accused as entered in the contemporaneous school record is 30th May, 2000.

24. We shall thus first take up the issue whether the trial is vitiated on the account of non-adherence to the mandatory requirements of the JJ Act.

25. At the outset, we may note that the fact regarding the accused appellant being juvenile and thus a CICL on the date of commission of the incident was known to the Investigating Officer(PW-25) right at inception of the proceedings. The Investigating Officer(PW-25) categorically stated in his deposition that after completing the investigation and preparing the final report against the juvenile in conflict with law, he took opinion from the Salem TTP, prepared a model charge sheet and filed the same in the trial Court. 11

26. The trial Court was also cognizant of this important aspect as can be clearly discerned from the opening lines of para 2 of the judgment of the trial Court wherein it is mentioned that Thirumoorthy, a 17 year old juvenile in conflict with

law, lives with his mother in Telanganaur. It has also been recorded by the trial Court that on the date of passing of the judgment, i.e., 18th February, 2019, the accused was 19 years and 2 months old and accordingly, he was required to be sent to a place of safety as per Section 20 of the JJ Act. The judgment passed by the Sessions Court also records the fact that during the course of the trial, the accused was kept in a child protection home. Further at para 32 of the judgment, the trial Court also noted that the Public Prosecutor himself argued that Thirumoorthy was a CICL who committed the offence upon the child victim.

27. Thus, there is no escape from the conclusion that even before the result of investigation was filed, the fact regarding the accused being a CICL was well known to the Investigating Officer(PW-25), the prosecution and the trial Court as well.

28. Before dealing with the rival contentions, we would now refer to some of the relevant provisions of the JJ Act which are required to be followed in a case involving prosecution of a CICL:- 12 3. General principles to be followed in administration of Act. --The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely: -- (i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years. (ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights. (iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child. (iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. (v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. (vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter. (vii) Positive measures: All

resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act. (viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child. (ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver. (x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. (xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. (xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. (xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest. (xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances. (xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole. (xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

9. Procedure to be followed by a Magistrate who has not been empowered under this Act. -- (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such

proceedings to the Board having jurisdiction. 14 (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be: Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act. (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect. (4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety. (emphasis supplied) 15. Preliminary assessment into heinous offences by Board. -- (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts. Explanation. -For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. 15 (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: Provided that the order of the Board to dispose of the matter shall be appealable

under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14.

18. Orders regarding child found to be in conflict with law. --(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit, - (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian; (b) direct the child to participate in group counselling and similar activities; (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board; (d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated; (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as 16 the Board may require, for the good behaviour and child's well-being for any period not exceeding three years; (f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years; (g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety. (2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to- (i) attend school; or (ii) attend a vocational training centre; or (iii) attend a therapeutic centre; or (iv) prohibit the child from visiting,

frequenting or appearing at a specified place; or (v) undergo a de-addiction programme. (3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Childrens Court having jurisdiction to try such offences.

19. Powers of Children's Court.-(1) After the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide that- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and Section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere; 17 (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18. (2)-(5)....

29. The provisions contained in Section 9(1) stipulate that when a Magistrate not empowered to exercise the power of the Board under the Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

30. Sections 9(2) and 9(3) cast a burden that where the Court itself is of the opinion that the person was a child on the date of commission of the offence, it shall conduct an inquiry so as to determine the age of such person and upon finding that the person alleged to have committed the offence was a child on date of commission of such offence, forward such person to the Board for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect.

31. In the present case, the situation is very stark inasmuch as, even when the charge sheet was filed, the Investigating Officer had clearly recorded that the date of birth of the accused was 30th May, 18 2000, and hence, even assuming that Sessions Court at Salem had been designated as a Childrens Court, there was no

option for the said Court but to forward the child to the concerned Board for further directions.

32. There is no dispute on the aspect that the offences of which the accused appellant was charged with, fall within the category of heinous offences as defined under Section 2(33) of the JJ Act. Section 15(1) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of Section 18 of the JJ Act. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial of summons case under Cr PC. Under first proviso to this sub- 19 section, the order passed by the Board is appealable under Section 101(2) of the JJ Act.

33. Section 18(3) provides that where the Board after preliminary assessment under Section 15 opines that there is a need for the said child to be tried as an adult, then the Board may order transfer of the trial of the case to the Childrens Court having jurisdiction to try such offences.

34. By virtue of Section 19(1), the Childrens Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.

35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of Ajeet Gurjar v. State of Madhya Pradesh³. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word may used in the said provision be read as shall. It was also held that holding of an inquiry under 19(1)(i) is not an empty formality. Section 19(1)(ii) provides that after examining the matter, if the Childrens Court comes to the conclusion that there is no need for trial of the child as an adult, instead of sending back 3 2023 SCC Online SC125520 the matter to the Board, the Court

itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Childrens Court have different consequences.

36. It was further held that the Childrens Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, all actions provided under Section 19 are mandatorily required to be undertaken by the Childrens Court.

37. As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellant filed before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.

38. In absence of a preliminary assessment being conducted by the Board under Section 15, and without an order being passed by the Board under Section 15(1) read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused. 21

39. Thus, it is evident that the procedure adopted by the Sessions Court in conducting the trial of the accused appellant is de hors the mandatory requirements of JJ Act.

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are in gross violation of the mandate of the Act and thus, the entire proceedings stand vitiated.

41. It seems that pursuant to the trial being concluded, the trial Court realized the gross illegality in the proceedings and thus, in an attempt to give a vestige of validity to the grossly illegal proceedings conducted earlier, an exercise was undertaken to deal with the accused appellant as per the provisions of the JJ Act on the aspect of sentencing. However, ex facie, the said action which seems to be

taken by way of providing an ex post facto imprimatur to the grossly illegal trial does not stand to scrutiny because the very foundation of the prosecution case is illegal to the core.

42. All the proceedings taken against the accused appellant are vitiated as being in total violation of the mandatory procedure prescribed under the JJ Act.

43. In the case of Karan Alias Fatiya(supra) relied upon by learned counsel for the State, this Court interpreted Section 9(3) 22 and held that this sub-section does not specifically or impliedly provide that the conviction recorded by any Court with respect to a person who has been subsequently, after the disposal of the case found to be juvenile or a child, would lose its effect, rather it is only the sentence if any passed by the Court would be deemed to have no effect. The said judgment is clearly distinguishable because in the present case, the fact that the accused was a child on the date of the incident was clearly known to the Investigating Officer, the prosecution and the trial Court and thus, there is no possibility of saving the illegal proceedings by giving them an ex post facto approval.

44. In the case of Pawan Kumar(supra), the plea of juvenility raised by the accused did not find favour of the Sessions Court as well as the High Court. However, in the appeal before this Court, a report was submitted by the Additional Sessions Judge, wherein it was opined that the appellant was a juvenile at the time of commission of alleged offences. The incident in the said case occurred on 1st December, 1995 and the age of juvenility was 16 years as provided in the then prevailing Juvenile Justice Act, 1986. In the peculiar facts of the said case, this Court held that by virtue of subsequent amendments, the age of juvenility had been raised 23 to 18 years and thus, the accused was entitled to be treated as a juvenile by virtue of the provisions of the JJ Act prevailing when the appeal was taken up. Since the accused had already undergone the maximum punishment of detention provided under the said Act, i.e., three years, it was directed that the accused therein be released forthwith.

45. In the above two referred cases, the situation presented was that the factum regarding the accused being a child within the meaning of the JJ Act came to light at a very late stage i.e. after final decision of the cases and hence both these

cases are clearly distinguishable from the case at hand.

46. In the case of Ajeet Gurjar(supra), this Court remitted back the matter to the Sessions Court for complying with the requirements of Section 19(1) of the JJ Act. However, in the present case, there is yet another hurdle which convinces us that it is not a fit case warranting de novo proceedings against the accused appellant by taking recourse to the provisions of the JJ Act. At the cost of repetition, it may be reiterated that the charge sheet was filed against the accused appellant directly before the Sessions Court (statedly designated as a Childrens Court) and he 24 was never presented before the Juvenile Justice Board as per the mandate of the JJ Act.

47. The accused appellant being a CICL was never subjected to preliminary assessment by the Board so as to find out whether he should be tried as an adult. Directing such an exercise at this stage would be sheer futility because now the appellant is nearly 23 years of age.

48. At this stage, there remains no realistic possibility of finding out the mental and physical capacity of the accused appellant to commit the offence or to assess his ability to understand the consequences of the offence and circumstances in which he committed the offence in the year 2016.

49. Since we have held that the entire proceedings taken against the appellant right from the stage of investigation and the completion of trial stand vitiated as having been undertaken in gross violation of the mandatory requirements of the JJ Act, we need not dwell into the merits of the matter or to reappreciate the evidence available on record for finding out whether the prosecution has been able to prove the guilt of the appellant by reliable circumstantial evidence. 25

50. Thus, we are left with no option but to quash and set aside the impugned judgment and direct that the appellant who is presently lodged in jail shall be released forthwith, if not required in any other case.

51. The appeal is allowed accordingly.

52. Pending application(s), if any, shall stand disposed of. .J.

(B.R. GAVAI) .J.

(SANDEEP MEHTA) New Delhi; March 22, 2024. 26

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com