NuruddIn (Accused) Vs. State of Assam

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Court : Guwahati

Decided On : Mar-22-1984

Judge : K. Lahiri and S. Haque, JJ.

Appellant : NuruddIn (Accused)

Respondent : State of Assam

Judgement :

K. Lahiri, J.

1. Nuruddin, the appellant is unfortunate in the real sense of the term. He was aged about 15 years when the incident happened. He could not have been sentenced to imprisonment for life if the incident would have happened in the neighbouring Union Territories as the Children Act of 1960 applicable in those territories bars trial of cases by the Court of Sessions. The Children Act of 1960, a Central Act, provides for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children. Joint trial of a child and a person not a child is prohibited under Section 24, Children Act Children's Courts take care of a delinquent offender.

2. Section 27 Criminal P.C. 1973, provides as under:

27. Jurisdiction in the case of juveniles. An offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

3. A separate law for the juvenile offenders was considered necessary even in the Criminal Procedure Code, 1898, vide Section 29B. Section 27 of the Code of Criminal Procedure, 1973, provides a separate law for juvenile offenders in accordance with the mandates contained in Article 39 of the Constitution. Realizing necessity of separate forum for trial and for special treatment, training and rehabilitation of youthful offender. Rule Saleilles in 'The Individualization of Punishment' observed way back in 1911, thus:

Responsibility as the basis of punishment and individualization as the criterion of its application : such is the formula of modern law. The eyes of justice have too long been bandaged and prevented from seeing the position of her scales; and this has given rise to many injustices. The bandage must be removed We demand a justice that sees clearly, that treats perverts as perverts and the wayward as wayward as redeemable members of society.

4. Indeed, B deQuires, put it as a kind of 'double entry penology.'

4A. In every State a Children Act has been enacted and, juvenile offenders punishable with death or imprisonment for life, under those legislative mandates are tried exclusively by a separate Court. Joint trial of a youthful offender with any other person has been prohibited This is why we say that the accused is1 really unfortunate in not having similar care and attention by a proper or appropriate Court who could have dealt with the juvenile offender, the way in which perverts and waywards should be treated to make them redeemable members of society. We are enlightened by the decision of the Supreme Court in Gopinath Ghosh v. State of West Bengal : 1984 CriLJ168 , wherein their Lordships, dealing with the provision of West Bengal Children Act, held that joint trial of minor with other accused was bad in law. Their Lordships lamented that the provisions of the West

Bengal Children Act are overlooked by the courts and the beneficial provisions were not applied by the Court The plea that the accused was below 16 years was taken up only when the accused reached the door of the Supreme Court Their Lordships observed that the Courts below had committed error in not ascertaining the age of the accused and in not putting the accused before an appropriate Juvenile Court under the Children Act Their Lordships, notwithstanding the plea taken up at a very late stage, set aside the conviction and sentence of the appellant under Section 302, I.P.C. and directed that the appellant should be released on bail and the case was remitted to the appropriate court, which could take care of the delinquent offender under the West Bengal Children Act, Desai J. speaking for the Supreme Court observed as under (Para 10):

However, in view of the underlying intendment and beneficial provisions of the Act read with Clause (f) of Article 39 of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment we consider it proper not to allow a technical contention that this contention is being raised in this Court or the first time to thwart the benefit of the provisions being extended to the appellant if he was otherwise entitled to it.

5. The State of Assam was not lagging behind in enacting the Assam Children Act, 1970 (Assam Act XII of 1971). However, this Act has not been brought into operation, as yet Rules have not been framed The inaction to enforce the law is volatile of the Directive Principles contained in Article 39(f) of the Constitution. We are astonished, when we are informed by learned members of the Bar that the benevolent social legislation has not been enforced as yet We hopefully desire that the benevolent provisions which put to right many wrongs should be brought in action forthwith. This is another reason why we say the accused is unfortunate.

6. Next deplorable feature is that the incident happened in 1975, the accused convicted in September, 1978 but it took long five years to prepare the paper book consisting of only 107 pages. This is another reason why we say that misfortune

struck the accused the moment he struck the deceased Jabur, as alleged by the prosecution.

7. The accused has been convicted under Section 302, Penal Code, and sentenced to rigorous imprisonment for life. There is no dispute at the Bar that the accused was aged 15 years few months at the time of the occurrence. The story in short is that the young boy accompanied by his elders reached a shop house wherein the deceased along with Kadar, Wahed and Rajab were sitting and an altercation started between the parties. Some person intervened but a sudden 'marpit' started between them P.Ws. 7, 8 and 9 Kadar, Wahed and Rustom respectively, sustained injuries. However, those injuries were inflicted, according to the prosecution, by accused Alaluddin. P.W. 7 Kadar received five injuries of simple nature except one. Wahed received only one simple injury dealt by Alauddia Similarly, Rustom received two simple injuries. All these injuries were, according to the prosecution dagger injuries caused by Alauddin Alal There are as many as 8 injuries inflicted by Alal on the three persons, however, though there was only one grievous injury non-serious in nature. But the young boy Nuruddin, the appellant dealt only one blow with a similar weapon but it fell on a very delicate portion which caused the death of Jahur. Mr. Bhukan, learned counsel for this appellant submits that it is a case under Section 104. Penal Code, as the accused had not had the requisite 'intention' required for establishing an offence under Section 302, Penal Code. No other point has been urged and that too very rightly.

8. We are, therefore, to judge the action of a boy aged about 15 years to decide as to whether he had the requisite intention. He was not matured He had a knife as had Alal or Alaluddin. He had absolutely no personal grudge against Jahur, the deceased According to some of the prosecution witnesses Jahur all of a sudden appeared on the scene and tried to intervene. Admittedly, a quarrel was going on and there was a 'marpit' between the parties as stated by P. Ws. 7, Kadar Ali Hasi, P.W. 10 Mofisuddin Ahmed and P.W. 11 Ayab Ali. In the course of mutual foray, Johur must have been a moving object It is the case of the prosecution that the appellant dealt only one blow, which proved fatal. It is difficult for us to hold that the young boy aged about 15 years had matured knowledge or cogitative faculties. There was a sudden fight and only one blow was inflicted which fell on the chest

piercing through it, touched the heart of Jahur and the injury terminated his life. The question is whether the circumstances under which Nuruddin gave the knife blow on the chest, he could be said to have intended to cause death or he could be imputed the intention to cause that particular injury which has proved fatal? In Jagtar Singh v. State of Punjab : 1983 CriLJ852 their Lordships dealt with somewhat, similar question. In that case as well there was a sudden quarrel and only one blow was. inflicted and their Lordships expressed doubt as to whether the appellant had the necessary intent to cause that particular injury which had caused death. There was no malice. The blow was given in a sudden quarrel. In the instant case the age of the accused is another relevant factor. In a trivial quarrel, the appellant, a young boy wielded a knife which landed in the chest of the deceased Under these circumstances, we are of the opinion, as expressed by their Lordships in Jagtar Singh (Supra), that 'it is a permissible inference that the appellant M least could be imputed the knowledge that he was likely to cause an injury which was likely to cause death'. We also hold accordingly. We, therefore, hold that the offence falls under Section 304 Part II Penal Code, as held by their Lordships in Jagtar Singh 1983 Cri LJ 852 (SC) (supra). While reaching this conclusion we have taken into consideration the decision of Jagrup Singh v. State of Haryana (1981) 3 SCC 676 : 1981 Cri LJ 1136, Randhir Singh v. State of Punjab : 1982 CriLJ195 , Kulwant Rai v. State of Punjab : AIR 1982 SC126 and Ram Prasad Sahu v. State of Bihar : 1980 CriLJ10 .

9. In the result, the appeal is partly allowed to the extent that the conviction of the appellant for the offence under Section 302, Penal Code, and sentence of rigorous imprisonment for life are set aside. The appellant is convicted for having committed an offence under Section 304 Part II, Penal Code, and we sentence him to suffer rigorous imprisonment for five years. We were inclined to reduce the sentence but we are told that the accused in jail has already suffered five years rigorous imprisonment.