

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 585 of 2012

Arun Kumar Prajapati son of Sri Shivnath Prajapati, resident of
Village- Budhibir, P.O. & P.S.- Chainpur, District- Palamau

... .. Petitioner

-Versus-

State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Pankaj Kumar Dubey, Advocate
For the State : Mr. P.D. Agarwal, A.P.P.

10/10.01.2022

1. Heard Mr. Pankaj Kumar Dubey, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. P.D. Agarwal, learned counsel appearing for the Opposite Party-State.
3. The present criminal revision application is directed against the Judgment dated 30.05.2012 passed by the learned Addl. Sessions Judge-I, Palamau at Daltonganj in Criminal Appeal No. 63 of 2009 whereby and whereunder the learned appellate court confirmed the Judgment passed by the learned Juvenile Justice Board, Palamau at Daltonganj and dismissed the criminal appeal preferred by the petitioner.
4. The petitioner had preferred the criminal appeal against the Judgment dated 19.06.2009 passed by the learned Juvenile Justice Board, Palamau at Daltonganj in G.R. Case No.793 of 2001 / T.R. No. 313 of 2009 (arising out of Chainpur P.S. Case No. 71/2001 dated 19.06.2001) whereby and whereunder the petitioner was held to be a Juvenile in conflict with law and was found guilty for committing the offences under Sections 302/34 and 201/34 of the Indian Penal Code (hereinafter referred to as **IPC**) and was directed to be sent to Special Home at Chirudih, Dhanbad for a period of 03 years.

Arguments on behalf of the petitioner

5. Learned counsel for the petitioner submitted that he does not want to argue the case on merit and he argued on the point of sentence imposed upon the petitioner. He submitted that the date of occurrence is 19.06.2001 on which the petitioner was a juvenile and the marriage had taken place in the year 1998. Learned counsel submitted that F.I.R. was registered under Section 304B/34 of IPC, but the petitioner was ultimately found to be a juvenile and the inquiry was conducted and he was found guilty of the offences under Sections 302/34 and 201/34 of IPC. He submitted that the present age of the petitioner is 34 years and accordingly, the conviction may be upheld, but so far as the punishment awarded to the petitioner is concerned, appropriate direction may be issued in view of the judgments passed by the Hon'ble Supreme Court reported in **1999 (1) PLJR 732 (SC) (Devendra Yadav -vs- The State of Bihar)** and **1990 CriLJ 2671 (SC) (Bhoop Ram -vs- State of U.P.)** and passed by this Court reported in **2008 (4) JCR 373 (Jhr.) Ashok Kumar Singh -vs- State of Bihar (Now Jharkhand)** and the punishment may be set aside.

Arguments on behalf of the Opposite Party-State

6. Learned A.P.P. appearing on behalf of the Opposite Party-State opposed the prayer made on behalf of the petitioner and submitted that concurrent findings have been recorded by the learned Juvenile Justice Board and the learned appellate court and accordingly, no interference is called for in revisional jurisdiction.

Findings of this Court

7. The prosecution case is based on the fardbeyan of the Informant namely, Ambika Prajapati alleging inter-alia that the Informant's daughter namely, Anapurna Devi (now deceased) was married with the petitioner in the year 1998 and

after six months, he brought his daughter to his house where she told him that her father-in-law, mother-in-law and husband used to torture her to meet the demand of dowry. After sometime, the petitioner took his wife back to her marital house. After sometime, the Informant's son Jaiprakash Prajapati visited to see his sister and after returning, he narrated to his parents that the mother-in-law, father-in-law and husband of his sister were demanding cash of Rs.10,000/-, gold chain and T.V. as dowry and for fulfilment of the demand, they were subjecting cruelty to her. Thereafter, the Informant visited the marital house of his daughter where the father-in-law, mother-in-law and husband of his daughter told him that if their demand of dowry could not be met, they would not keep his daughter. Knowing this fact, the Informant brought his daughter to his house in the month of February, 2001. Thereafter, a panchayati was held where the in-laws assured the Panches to keep his daughter properly and in a dignified manner and the Informant sent his daughter to her marital house. It was further alleged that one week prior to the date of occurrence on 19.06.2001 Jaiprakash Prajapati had visited the marital house of his sister at Budhibir and after coming back, he disclosed that the husband and in-laws of his sister used to give threatening to her that they would kill her. It was alleged that on 19.06.2001 at 12 O'Clock, Shiv Nath Prajapati, the Samadhi of the Informant came to the village of the Informant and informed him that in the evening of 18.06.2001, his daughter had gone somewhere and since then, she was missing. Thereafter, the Informant went to Village-Bhudhibir where he came to know that the dead body of his daughter was found in a well situated at some distance from her marital house. Thereafter, the Informant informed the police and got his fardbeyan recorded.

8. On the basis of the fardbeyan, the case was registered as

Chainpur P.S. Case No. 71/2001 dated 19.06.2001 under Sections 304(B), 201 of IPC and Section 3 / 4 of the Dowry Prohibition Act against the petitioner and his parents. After completion of investigation, the Investigating Officer submitted Charge-sheet No.99/2001 dated 31.07.2001 under Section 302, 201/34 of IPC against them and on the basis of the materials on record, cognizance was taken in the case under the aforesaid sections.

9. On the basis of the order dated 07.08.2002 passed by this Court in B.A. No. 2054/2002, the learned C.J.M., vide order dated 05.10.2002, declared the petitioner to be a Juvenile on the date of occurrence and separated his case and sent his case record to the court of the learned A.C.J.M., Palamau, the then designated court for Juvenile for further inquiry in accordance with law.
10. Thereafter, the substance of accusation for the offences under Sections 302 and 201 of IPC was read over and explained to the petitioner in Hindi to which he pleaded not guilty and claimed to face the inquiry under law.
11. In course of inquiry, the prosecution examined altogether five witnesses in support of its case. P.W.-1 is Jagdish Prajapati, P.W.-2 is Jaiprakash Prajapati, P.W.-3 is Ambika Prajapati, P.W.-4 is Murat Yadav and P.W.-5 is Dr. G.P. Singh.
12. Thereafter, on 09.09.2005, the statements of the petitioner were recorded wherein he simply denied the incriminating evidences put to him and claimed to be innocent. The petitioner did not examine any witness in his defence.
13. The learned Juvenile Justice Board, Palamau at Daltonganj considered the evidences on record and recorded its findings in Para-14 that there is no direct evidence of murder of the deceased because there is no eye witness of the occurrence of murder and the whole case of the prosecution rests on the circumstantial evidence. The prosecution has relied upon the

circumstances that there had been marital discord between the deceased and her husband and in-laws and the deceased was being tortured and ill-treated by her husband and in-laws because of their demand of cash of Rs.10,000/-, one colour T.V. and one Golden Chain as dowry. The learned Juvenile Justice Board found that the evidence of P.W.-3 Informant, P.W.-2, brother of the deceased and P.W.-1 are consistent and devoid of any contradictions. From their evidence, it has clearly been established that the deceased was being subjected to cruelty by her husband and in-laws because of the demand of dowry. The doctor has found antemortem injuries on the dead body of the deceased. The doctor has also found black mark on the front of the neck of the deceased and also found that the tongue was protruded and the eye balls were protruding out of the sockets. The evidence of the doctor who conducted post-mortem on the dead body of the deceased reveals that the deceased was first murdered by compressing her neck due to which black mark was available on the neck and blood had come out from the mouth of the deceased and thereafter, the dead body was thrown in the well in order to give it the colour of suicide. The learned Juvenile Justice Board further recorded that the prosecution established the circumstances that the deceased was being tortured and ill-treated for dowry and it has also been proved that the motive of murder of the deceased was marital discord because of demand of dowry.

14. The learned Juvenile Justice Board further recorded in Para-15 that the other circumstance relied upon by the prosecution is that subsequent conduct of the father-in-law of the deceased who went to the village of the father of the deceased and informed her father that the deceased had left her house and was missing since last evening. P.W.-3, P.W.2 and P.W.1 stated that Shiv Nath Prajapati came and informed that the deceased

had gone somewhere and was missing which was a false information either to give it a colour of suicide, or to prevent himself from being suspected by anyone. The evidence of the doctor shows that the deceased was murdered by pressing her neck leading to Asphyxia. In such circumstances, the past conduct of the father of the petitioner finds importance and is also one of the circumstances leading to guilt of the petitioner and his family members committing murder of the deceased.

15. The learned Juvenile Justice Board further recorded in Para-16 that all the circumstances appearing in evidence were explained to the petitioner, but he offered no explanation which itself forms an additional link in the chain of circumstances to point out his guilt.
16. The learned Juvenile Justice Board further recorded in Para-18 that there is no dispute that the deceased was a legally married wife of the petitioner and the prosecution evidence establishes that the deceased was being subjected to cruelty by the petitioner and in-laws. The prosecution further establishes that soon before the death of the deceased, she had been subjected to cruelty or harassment by the petitioner and in-laws for their demand of dowry of Rs.10,000/-, cash, T.V. and golden chain and her death was due to strangulation or throating which took place under unnatural circumstances within 7 years of marriage. Therefore, all the circumstances show that the petitioner or his relatives shall be deemed to be guilty of causing dowry death as per the presumption under Section 113-B of the Evidence Act. This conclusive presumption also provides an additional link in the circumstances leading to the guilt of the petitioner and his family members.
17. The learned Juvenile Justice Board further recorded in Para-19 that the above circumstances are sufficient to negate the innocence of the petitioner and to bring home the offence

beyond all reasonable doubts. All the circumstances are conclusive in nature and are also complete and there is no gap left in the chain of evidence. The circumstances are consistent with the hypothesis of the guilt of the petitioner and totally inconsistent with his innocence. The learned Juvenile Justice Board further recorded that the father-in-law namely, Shiv Nath Prajapati and the mother-in-law namely, Mulla Devi have already been convicted and sentenced by the court of the learned 4th Additional Sessions Judge, Palamau at Daltonganj vide Judgment dated 25.01.2005 and their appeal is pending before the High Court. The petitioner was husband of the deceased and the evidence shows that he was also involved in the occurrence of cruelty to the deceased because of demand of dowry and thus, he shared common intention alongwith his parents for committing the murder of the deceased. The prosecution has proved its case beyond all reasonable doubts. The learned Juvenile Justice Board further recorded that the petitioner has caused the evidence of the commission of the offence to disappear by throwing the dead body in a well in the outskirts of the village in order to give it a colour of suicide and also shared common intention for giving false information to the parents of the deceased by suppressing the occurrence.

- 18.** The learned Juvenile Justice Board held the petitioner to be a Juvenile in conflict with law and found him guilty for committing the offences under Sections 302/34 and 201/34 of the Indian Penal Code and ordered to send him to the Special Home at Chirudih, Dhanbad for a period of 03 years.
- 19.** The learned appellate court again considered the evidences on record and, in Para-7 of its judgement, re-appreciated the evidence of P.W.-3, the Informant and further recorded that P.W.-1 has corroborated the testimony of P.W.-3 and P.W.-2 has also corroborated the statements of P.W.-3. P.W.-4 is a hostile witness, but he has admitted his signature on the

inquest report. P.W.-5 Dr. G.P. Singh testified that he had conducted post-mortem examination on the dead body of the deceased. After external examination, he had found the tongue protruded and beaten between teeth and the eye balls protruding out of the sockets. He opined the cause of death as due to compression over neck leading to Asphyxia. He proved the post-mortem report as Exhibit-1.

20. The learned appellate court further recorded in Para-8 that the learned Juvenile Justice Board has rightly found that because of marital discord between the bride (deceased) and the bridegroom (petitioner), she was murdered by the petitioner and to screen himself and to conceal / disappear the evidence, her dead body was thrown in a well at the outskirts of the village. As per the medical evidence, it becomes clear that the deceased had died of homicidal death due to compression over her neck leading to Asphyxia. The learned appellate court further recorded that the case is based on circumstantial evidence as there is no ocular evidence and the chain of circumstances is complete and linked together pointing that the petitioner committed the offence and one of the important circumstances is that there had been marital discord between the deceased and her husband and she was being ill-treated and subjected to extreme cruelty by the petitioner for demand of dowry. On the basis of the above findings, the learned appellate court found that the judgment passed by the learned Juvenile Justice Board is legal, proper and sustainable in the eye of law and refused to interfere and confirmed the same.
21. The learned appellate court, in Para-9, also considered the argument regarding attaining majority by the petitioner at the time of appeal vis-a-vis the period of detention awarded to the petitioner in terms of Section 15(1)(g) of the Juvenile Justice (Care & Protection of Children) Act, 2000 and recorded that the petitioner has already stayed in Remand Home, Ranchi

from 25.06.2001 to 11.06.2003. The learned appellate court ordered to send the petitioner to the Borstal School, Central Jail, Medininagar for his stay there for the rest period, out of three years, and also refused to interfere with the period of detention for three years awarded to the petitioner and dismissed the appeal.

22. This Court finds that both the learned courts below have recorded consistent and concurrent findings regarding committing the offences under Sections 302/34 and 201/34 of IPC by the petitioner after appreciating the materials on record. This Court does not find any illegality or perversity in the findings recorded by the learned courts below, which are well reasoned judgements. Accordingly, the finding of guilt of the petitioner committing the offences under Sections 302/34 and 201/34 of the Indian Penal Code by the learned Juvenile Justice Board, Palamau at Daltonganj, which has been confirmed by the learned appellate court, is upheld.
23. Moreover, the learned counsel for the petitioner has not challenged the judgement of conviction but has limited his arguments to the fact that the petitioner has already attained the age of 34 years and has relied upon certain judgements to submit that in such circumstances, the conviction be upheld but the petitioner be released.
24. In the present case, though the petitioner has remained in detention for a period of more than 02 years, out of the total detention period of 03 years, and the present age of the petitioner is 34 years, but this Court cannot lose sight of the manner in which the offence has been committed by the petitioner and therefore, reducing the punishment of the petitioner would not serve the ends of justice.
25. This Court is of the view that one of the prime concerns of the juvenile justice system is to ensure that the delinquent juvenile is also prevented from reoffending. In fact, the punishment

three years itself is a part of process of reintegration of the petitioner with the society and for that purpose, the petitioner has to take responsibility of his act being illegal.

26. This Court finds that considering the nature of offence involved in the present case and the manner in which it has been committed, the petitioner does not deserve any reduction in the punishment. Accordingly, the period of detention of the petitioner is also maintained.
27. On the point of attaining majority by the petitioner after the occurrence, the learned counsel appearing for petitioner has relied upon the judgments passed by the Hon'ble Supreme Court reported in *1999 (1) PLJR 732 (supra)*, *1990 CriLJ 2671 (supra)* and *2008 (4) JCR 373 (Jhr)*.
28. The judgement reported in *1999 (1) PLJR 732 (supra)* was passed under the provisions of Juvenile Justice Act, 1986 and a point was taken for the first time before the appellate court that the appellant was a juvenile and was found to be juvenile on the date of occurrence after due enquiry. The Hon'ble High Court accepted the submission of the appellant that he be not sent to juvenile court for passing order in accordance with Sections 21 and 22 of the said Act of 1986 as the appellant was 31 years of age and in such circumstances, the conviction was upheld and the sentence of imprisonment was set-aside.
29. The judgement reported in *1990 CriLJ 2671 (supra)* was passed by the Hon'ble Supreme Court and the matter was under the provisions of U.P. Children Act. In the said case, the appellant was convicted along with other adults in the trial and was sentenced for life should have been treated as "child" under the provisions of U.P. Children Act and sent to an approved school for detention till he attained 18 years of age. The age of the appellant was enquired into by virtue of the orders of the Hon'ble Supreme Court and he was found to be less than 16 years on the date of occurrence. In this back ground, the

Hon'ble Supreme Court recorded that the appellant was already 28 years of age and there was no question of sending him to an approved school under U.P. Children Act and consequently sustained the conviction but quashed the sentence and directed his release forthwith.

30. In the judgement reported in *2008 (4) JCR 373 (Jhr)*, the appellants were convicted for life by the trial court, but the appellants were found to be juvenile on the date of occurrence and accordingly upheld the conviction and set-aside the sentence as under Section 16 of Juvenile Justice (Care and Protection of Children) Act, 2000 no juvenile can be sentenced to life imprisonment.
31. The aforesaid judgements relied upon by the learned counsel of the petitioner do not apply to the facts and circumstances of the present case where the allegations against the petitioner were enquired into as a juvenile before the Juvenile Justice Board under Juvenile Justice (Care and Protection of Children) Act, 2000 and upon finding him guilty, an order of detention has been passed and now the petitioner has attained an age of 34 years.
32. In the case of *Salil Bali v. Union of India* reported in *(2013) 7 SCC 705*, Para-63, it has been held that the essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and reintegration of children in conflict with law into mainstream society. The Hon'ble Supreme Court also corrected the misunderstanding of the law relating to the sentencing of the juveniles and considered the general understanding that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. The Hon'ble Supreme Court considered Section 15(1)(g), as it stood before and after the amendment which came into effect from 22.8.2006 and

held that the amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year, he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority.

33. On this issue, this Court finds that the learned appellate court has already dealt with the same at Para-9 of its judgment and has ordered to send the petitioner to the Borstal School, Central Jail, Medininagar for his stay there for the rest period, out of the total detention period of three years, which is an appropriate order in the present case.
34. In view of the aforesaid judgement passed in the case of *Salil Bali v. Union of India* reported in (2013) 7 SCC 705, this Court is not inclined to interfere with the direction issued by the learned appellate court in this regard. Consequently, the present criminal revision application is hereby **dismissed**.
35. Bail bond furnished by the petitioner is cancelled.
36. Pending interlocutory application, if any, is dismissed as not pressed.
37. Let the Lower Court Records be sent back to the learned Juvenile Justice Board/court concerned.
38. Let a copy of this order be communicated to the learned court below through "email/FAX".

(Anubha Rawat Choudhary, J.)

Binit/