

Present:

Mr. Justice Gobindra Chandra Tagore.

And

Mr. Justice Mohammad Ullah.

Criminal Appeal No. 1138 of 1999

Minnat alias Minnat Ali alias Minhaz Ali

.....Appellant.

Vs

The State

.....Respondent.

None appears

.....For the Appellant.

Ms. Rona Naharin, the learned Deputy

Attorney General with

Mr. A.B.M. Mahbub, the learned Assistant

Attorney General.

..... For the Respondent State.

Heard and judgment on the 26th December, 2012

Mohammad Ullah, J.

This criminal appeal is from the judgment and order dated 19.5.1999 passed in Nari-O-Shishu Nirjatan Case No. 42 of 1998 by which the learned Special Tribunal No. 3, Tangail convicted the appellant under section 6(1) of the Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995 (**hereinafter referred to as the Ain, 1995**) and sentenced him to suffer imprisonment for life.

The prosecution case, in brief, is that the informant Sukur Ali lodged a First Information Report (**Shortly the FIR**) on 13.08.1996 with the Tangail Police Station on the allegation of rape on his daughter, Sufia Akhter aged about 4 years by the convict-appellant, Minnat alias Minnat Ali alias Minhaz Ali. The informant alleged that the incident of rape had taken place on August 5, 1996 at about 5 p.m. Accordingly Tangail Police Station Case No. 10 dated 13.8.1996 under section 6(1) of the Ain, 1995 was recorded against the sole accused Minnat Ali, which subsequently gave rise to G.R No. 356 (2) 96.

Police investigated into the matter and submitted Charge Sheet on 30.10.1996 under section 6(1) of the Ain, 1995 against the accused Minnat Ali. Accordingly by an order dated 23.4.1997 charge was framed by the Special Tribunal under section 6(1) of the Ain, 1995 and was read over to the accused Minnat Ali, who pleaded innocence and claimed to be tried.

The prosecution, during trial, produced and examined 11 witnesses to prove the charge, while the defence examined none.

Then the accused Minnat alias Minnat Ali alias Minhaz Ali aged about 13 years was examined by the tribunal under section

342 of the Code of Criminal Procedure (**Shortly the Code, 1898**) by an order dated 28.8.1999 and the accused further pleaded not guilty.

However from the trend of cross-examination of the prosecution witnesses the defence plea appears to be that he was falsely implicated in the case out of previous enmity and grudge ensuing from collision between one Hasan Master, father-in-law of the informant and the father of the accused, Minnat Ali. Further case of the defence is that at the time of alleged occurrence the accused Minnat was a minor boy of 10 (ten) years.

Upon consideration of the prosecution witnesses and other material evidences on record the Special Tribunal found the appellant guilty of the offence under section 6(1) of the Ain, 1995 and convicted and sentenced him as stated above.

Then the appellant Mennat Ali preferred this appeal before this Court and subsequently he was enlarged on bail on 31.08.2006 by this Court.

None appears for the appellant.

Ms. Rona Naharin, the learned Deputy Attorney General along with Mr. A.B.M. Mahbub, the learned Assistant Attorney

General appearing on behalf of the respondent-State candidly concedes that the appellant Minnat Ali at the time of occurrence and the framing of charge as well as examination under section 342 of the Code, 1898 was a minor.

The learned D.A.G. frankly submits further that there is hardly any scope to oppose the appeal as the trial of the case was commenced against a minor by the Special Tribunal instead of a Juvenile Court.

We have heard the learned D.A.G. and considered the grounds taken by the appellant in the petition of appeal and perused the other material evidences on record including the FIR, the charge sheet, charge framed, and the examination sheet of the accused -appellant under section 342 of the Code, 1898, wherefrom it transpires that the appellant at the time of alleged date of occurrence as well as the framing of charge was a minor.

In view of the provision of section 83 of the Penal Code nothing shall be an offence which is done by a child above 9 (nine) years and below 12 (twelve) years, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct. On that occasion the court was under an obligation to examine the appellant a boy of 10(ten) years as to

whether he had the understanding about the alleged offence like the commission of rape.

Moreover, so far the medical jurisprudence is concerned, it is absurd that a boy of 10(ten) years being the appellant would have understanding of the consequence of committing of an offence of rape and that too with a child of 4(four) years.

But the Tribunal without examining the maturity of understanding of the appellant as to the commission of the said offence found him guilty under section 6(1) of the Ain, 1995 and thus the Tribunal committed an illegality in passing the impugned judgment and order of conviction and sentence.

Further it appears from the examination sheet of section 342 of the Code, 1898 that at the time of commission of the offence the appellant was a child of 10(ten) years of age.

In such view of the matter, the case should have been tried under the provision of subsection (3) of section 5 of the Children Act by a competent Juvenile Court, but the trial was held by the Special Tribunal, who have had no jurisdiction to hold the trial of the instant case and thus, the whole trial of the case was without

jurisdiction and consequently, the conviction and sentenced were also without jurisdiction.

Accordingly, the judgment and order of conviction and sentence dated 19.5.1999 passed by the Special Tribunal No. 3, Tangail in Nari-O- Shishu Nirjatan Case No. 42 of 1998 under section 6(1) of the Ain, 1995 is hereby set aside.

The appellant Minnat alias Minnat Ali alias Minhaz Ali, son of late Md. Harmuz Ali of Village - Charpatehpur of Police Station and District- Tangail is acquitted of the charge levelled against him.

The convict appellant is released from his bail bond, if furnished any.

Send down the lower court record along with a copy of this judgment to the Special Tribunal No. 3, Tangail.

Gobindra Chandra Tagore, J.

I agree.