109

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-801-2022
Date of decision:08.07.2022

SUHAIL AHMAD ...Petitioner

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Tribhuvan Dahiya, Senior Advocate with
Mr. Sudarshan Kumar, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana

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SURESHWAR THAKUR, J. (ORAL)

1. In FIR bearing No.45 of 27.01.2021, registered at Police Station Quilla Panipat, offences constituted under Sections 201, 302, 34 of IPC, later on changed to under Sections 460, 201, 120-B, 34 of IPC, and, under Section 25 of Arms Act, are embodied.

2. The petition FIR offences (supra) are alleged to be committed by two co-accused namely Suhail Ahmad, and, Sameer. There is no quarrel amongst the learned counsel appearing for the petitioner, and, for the respondent-State that, at the relevant stage, and/or, in contemporaneity to the commission of the FIR offences, rather both the accused were aged about 16 years.

3. Though, in the face of the above undisputed factum, both the co-accused, who are juveniles in conflict with law, were to be tried, and/or, their delinquent conduct was enjoined to be inquired into by the Children's Court, as, constituted under the The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Act). Moreover so, as the petition FIR offences, are alleged by the prosecution, to be “heinous offences”, as defined in

Section 2(33) of the Act, provisions whereof become extracted hereinafter. Consequently, the respondent-State has contended before this Court, that, the dis-affirmative concurrent verdicts as, made, upon the petitioner's application cast, under Section 19 of the Act, require theirs becoming validated or upheld by this Court.

> *"2. xxx*
> *(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;"*

4. The learned counsel appearing for the petitioner, has most vociferously contested, the afore made submission made before this Court, by the learned State counsel. Therefore, the above raised controversy, has to be adjudicated, and, in doing so, it is deemed fit, and, appropriate to make a keenest perusal, and, also a studied analyses of the provisions (supra), besides, also of the provisions carried in Sections 15, and, 19 "of the Act", both of which provisions become extracted hereinafter.

> *"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 sub-section (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.

(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 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be applealable 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.

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19. ***Powers of Children's Court.*** *-- (1) After the receipt of preliminary assessment from the Board under section 15, the Children ś 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;

(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) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be

provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children ś Court for record and follow up, as may be required."

5. A circumspect reading of the statutory provisions, as, carried in sub Section (1) of Section 15, unfolds that, when the juvenile in conflict with law, conspicuously, at the relevant stage, inasmuch as, in contemporaneity to the commission of the petition FIR offence(s), has completed or is above the age of 16 years, and, when it is alleged against him that, he has committed a "heinous offence", thereupon it becoming incumbent, upon the Board to conduct a preliminary assessment qua his mental, and, physical capacity to commit such offence, his ability to understand the consequences of the offence, and, the circumstances in which he allegedly committed the offence. The thereunderneath proviso (supra) contemplates, that in the making of the above assessment, the Board may proceed to take the assistance of experienced psychologists or psycho-social workers, and, other experts.

6. After the receipt of the above assessment, and, after making an objective satisfaction thereof, the Board is required to, in consonance with the provisions of sub Section 3 of Section 18, provisions whereof stands extracted hereafter, make an order qua the child aged about 16 years, and/or, who is less than 18 years, rather in contemporaneity to the commission of the petition offences, becoming tried as an adult, and, also becomes statutorily injuncted to

make a further order qua transfer of the trial of the apposite case, to the Children's Court having jurisdiction to try such offences.

> *"18 (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 Children's Court having jurisdiction to try such offences."*

7. Upon the transfer of the trial of the case, after the Board concerned, makes within the ambit of sub-Section 3 of Section 18, hence an order qua the transfer of the trial of the apposite case of a juvenile, who at the relevant stage, is above 16 years, and/or, is below 18 years, rather to the Children's Court, thereupon the latter becomes enjoined, through the statutory mandate carried in Section 19, to enter, upon an inquiry or trial of the above transfer or committal to trial, rather qua the purported delinquent act of the juvenile, who at the relevant stage, was above 16 years, and/or, was below 18 years.

8. The learned counsel appearing for the petitioner, has rested, his opposition, to the argument addressed before this Court, by the learned State counsel, on two premises; 1) the FIR offences have been fallaciously construed to be "heinous offences", by concurrent dis-affirmative verdicts, as, made by both the learned Courts below, upon, the petitioner's application, cast under Section 19 of the Act; 2) he further rests the above argument on the ground that, the offence constituted against the petitioner, and, as the one embodied in Section 460 of the IPC, provisions whereof becomes extracted hereinafter, prescribes a duo of alternate punishments, inasmuch as, imprisonment for life, and, the alternate thereto imprisonment of either description rather for a term which "may" extend to 10 years. Therefore, he argues that since in the factual matrix of the instant case, the alternate to the imposition of sentence of

imprisonment of life, rather upon conclusion of the apposite inquiry, hence, upon the petitioner, is imposable upon him, and, also when the apposite alternate to the imposition of the sentence of imprisonment of life, upon the convict, either by the empowered Criminal Court of competent jurisdiction or by the Children's Court, does not imperatively, make any per-emptory statutory injunction, upon the Convicting Court concerned, to necessarily impose upon the convict, a punishment of 10/7 years, given the word 'may' preceding “extend to 10 years”, becoming readable or being connotative, of a statutory discretion being vested in the competent Court, to sentence the convict, even for a term even upto much less than 3 years, thereupon he argues that, in the wake of the above, the petition FIR offence, constituted under Section 460 of IPC, does not become a “heinous offence”, and, therefore, he strives to invalidate the impugned verdicts.

> *“**460**. **All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them**.—If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

9. In determining the vigor of the above submission, it is also, but necessary, to allude to the mandate carried in Section 2(33), whereins, occurs a prescription qua an offence, under the IPC or any other law for the time being in force, when necessitating hence a per-emptory imposition, upon the convict, a sentence of imprisonment for a term of 7 years or more, thereupon alone the

committed offence becoming a “heinous offence”. Therefore, the learned counsel for the petitioner has argued, that since the word 'may' preceding sentence upto 10 years, as carried in Section 460, rather leaves a statutory discretion in the competent Court, to impose a sentence even less than even 7 years. In sequel, he has further argued, that when the above made interpretation to Section 2(33) of the Act, is clearly reflective of the fact, that, the punishment imposable, upon the juvenile in conflict with law, rather by the Children's Court, qua a charge drawn against him under Section 460 of the IPC, is not imperatively required to extend for a term which may always extend to 7 years, but rather for above reasons, may be even for a term, hence less than 7 years. In consequence, though, he naturally further argues, that the offence under Section 460 of IPC, does not become a “heinous offence”, and, thereafter, argues that the instant criminal revision petition be allowed, and, the concurrent dis-affirmative verdicts, as made, upon the petitioner's application be quashed, and, set aside.

10. However, the above made argument would hold immense vigor, and, would become validated by this Court, only when the factual matrix or the prosecution case, as, alleged against the petitioner, evidently does pointedly rather fall within the ambit of the apposite incrimination, and, it necessitating the imposition of the alternate, to the imposition of sentence of life imprisonment, rather upon, the convict. However, when the incrimination as drawn against the petitioner, is rather, reflective of his causing the death of the deceased in the course of his committing the offence of lurking house trespass. Therefore, when only in case, the apposite incrimination, as, drawn against the petitioner appertains to a simpliciter commission of an offence of lurking house trespass by night or house-breaking by night, in course whereof, the accused, does not, however voluntarily cause or attempt to cause death or grievous hurt to

any person, whereupon(s) alone rather the alternate to the sentence of imprisonment of life, inasmuch as, a sentence of imprisonment even less than 7 years rather would become imposable, upon the convict, otherwise not. However, when Section 2(33) of the Act makes an offence to be a "heinous offence" when the imposable punishment, upon the convict is per-emptorily for a term extending upto 7 years or more. In sequel, the argument of the learned counsel for the petitioner would succeed, otherwise not. In discerning the validity of the above argument, and, necessarily for it to galvanize strength, it is to become embedded in the relevant factual/evidentiary strata, thereupon it is necessary to allude to the evidence, which has been, at this stage brought forth by the prosecution, rather against the petitioner.

11. The evidence as brought forth against the accused, at this stage, is comprised in the electronic evidence, as becomes encapsulated in a CCTV footage, revealing thereins, the factum of the accused not only committing the simpliciter offence of lurking house trespass by night or house-breaking by night, but also, in course thereof, theirs voluntarily causing or attempting to cause death or grievous hurt to any person. Therefore, when only, and, with respect of a commission of a simpliciter offence of lurking house trespass by night or house-breaking by night rather the imposable punishment, upon the convict, may be less than 7 years, and, may thereupon empower the convicting Court to sentence him to a term which may be even less than 7 year, whereas, contrarily the meaning assigned to a "heinous offence", is an offence would rather become a "heinous offence", only when the imposable sentence, upon the convict, is per-emptorily statutorily contemplated to necessarily extend upto a term of 7 years or more, and, also thereupon, if so imposable upon the convict, hence the impugned verdicts would become interfered with. However, when the

above alluded evidence, as, becomes brought forth, at this stage, by the prosecution against the accused, rather unfolds qua its *prima-facie* revealing, that the accused had, during the course of committing the offence of lurking house trespass by night or house-breaking by night, theirs also voluntarily causing or attempting to cause death, and, when in respect of the above drawn incrimination against them, rather the convicting Court becomes empowered to per-emptorily impose a sentence of life imprisonment, upon the juvenile in conflict with law. Therefore, when a “heinous offence” is statutorily described to be one in respect whereof, the per-emptorily imposable punishment, upon the accused/juvenile in conflict with law, is imprisonment upto a term extending upto 7 years. Consequently, when in respect of or qua an offence under Section 460 of IPC, more especially for the reasons (supra), the sentence of imprisonment of life, is per-emptorily prescribed to be imposed, upon the juvenile in conflict with law, term whereof is explicitly beyond 7 years. In sequel, the petition offences are to be construed to be “heinous offence”, and, the impugned order, and, transfer of the case to the Children's Court, rather for his being tried as an adult, is required to be sustained.

12. The learned counsel for the petitioner, has also most vehemently argued that, the impugned orders are legally deficit, inasmuch as, the mandate of the proviso to sub-Section 1 of Section 15 of the Act, has been breached, inasmuch as, the Board concerned, has not taking the assistance of experienced psychologists or psycho-social workers or an expert rather for the making of the statutorily ordained preliminary assessment of the petitioner. But the above argument becomes completely unhinged, as the Board concerned, in paragraph 8 of its verdict, has referred to the relevant assessment.

13. There is no merit in the petition, and, the same is hereby dismissed. The impugned orders are maintained, and, upheld.

14. The afore observations are meant only for the disposal of the present petition, and, shall have no bearings, upon the merits of the inquiry, as may become entered into against the petitioner, by the Children's Court.

15. This Court appreciates the legal assistance purveyed to this Court, by the learned senior counsel for the petitioner, and, also by the learned State counsel.

16. The Registry is directed to forthwith forward a copy of this verdict, to all the Juvenile Justice Boards within the State of Punjab, Haryana, and, also within the Union Territory, Chandigarh.

(SURESHWAR THAKUR)
08.07.2022 **JUDGE**

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Whether speaking/reasoned:- **Yes/No**
Whether reportable: **Yes/No**