

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2023 OF 2012

(@ SPECIAL LEAVE PETITION (CRL.) NO. 7695 OF 2010)

TOK TADE

APPELLANT

VERSUS

NABAM AMAS & ANR.

RESPONDENTS

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Gauhati in Criminal Appeal No.3 (AP) of 2009, dated 03.05.2010. By the impugned judgment and order, the High Court has affirmed the judgment and order passed by the Trial Court, in Sessions Case No. 490 of 2006, by convicting the first respondent-herein (R-1) under Sections 302, 376 and 201 of the Indian Penal Code, 1860 (the "IPC" for short). However, taking into consideration the plea of the learned Counsel for the R-1, as to the juvenility of R-1 on the date of the commission of the offence, i.e., 06.09.2005, the High Court, while sustaining the conviction passed by the Trial Court,

has granted R-1 the benefits under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the "Act" for short). The High Court vide the impugned judgment and order has restricted the sentence awarded by the Court below to the period of imprisonment already undergone by R-1.

3. Aggrieved by the latter part of the judgment with respect to the benefits conferred upon R-1 under the Act, the Complainant-herein, who was not a party before the High Court, is before us with permission to file the Special Leave Petition. This Court, while issuing notice on 10.09.2010, had granted permission to the Complainant to file the Special Leave Petition against the judgment and order passed by the High Court, insofar as the latter portion of the judgment and order passed by the High Court is concerned.

4. The learned Counsel appearing for the appellant brings to our notice that he had approached the competent authority, i.e., the Public Information Officer, O/o. Deputy Commissioner, Papum Pare District, Yupia, Arunachal Pradesh. The concerned

authority has furnished the required information. The learned Counsel for the Appellant has placed reliance on the information so obtained under the Right to Information Act, 2005 and submits that the date of birth of R-1 is infact 05.02.1988 and not 05.04.1991, as claimed by R-1 before the High Court. The alleged claims by R-1 were based on the date of birth mentioned in the School Transfer Certificate, the date of birth as on the admission register and the medical report furnished vide their letter dated 28.03.2010.

5. In our opinion, this aspect of the matter requires to be re-looked into by the High Court, for the simple reason that the Complainant was not a party before the High Court and the above-stated fact was not brought to the notice of the High Court at the time of the decision.

6. In view of the above, we partly allow this appeal and set aside only that portion of the order of the High Court, where the High Court has come to the conclusion that R-1 is a juvenile under the provisions of the Act. The High Court will now consider this

particular aspect of the matter afresh itself or assign the same to any competent authority. We request the High Court to decide and complete this exercise as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this order.

Appeal is disposed of accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;
DECEMBER 10, 2012.

JUDGMENT