

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-295-DB of 2010(O&M)

Date of Decision : October 01, 2015

Karamjit Singh and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Gautam Dutt, Advocate
for the appellants.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J. (Oral)

The two appellants, namely, Karamjit Singh and Harpal Singh alongwith four others, namely, Avtar Singh, Sahab Singh, Jagjit Singh and Balwinder Singh were tried for committing the offences punishable under Sections 302/34 IPC. Vide judgment and order dated 1.2.2010, learned Additional Sessions Judge (Fast Track Court), Karnal acquitted the four co-accused of the appellants. However, both the appellants were held guilty for committing the offences punishable under Sections 302/34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two years.

Aggrieved of their conviction and sentences, the

appellants filed the present appeal, which came to be admitted on 17.3.2010 and the recovery of fine was ordered to be stayed during the pendency of the appeal.

During pendency of the appeal, the appellants filed CRM 3493 of 2014 under Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as “**the Act of 2000**”) read with Section 482 Cr.P.C. for referring the matter to the Juvenile Justice Board, Karnal for holding an enquiry and declaring the appellants as juveniles. Alongwith the application, the appellants placed on record certificate of Secondary School Examination as well as Middle Standard Examination conducted by the Board of School Education, Haryana (Annexure A-1) (Colly.) wherein the date of birth of Karamjit Singh-appellant was mentioned as 27.7.1990 and certificate of Middle Standard Examination conducted by the Board of School Education, Haryana (Annexure A-2) wherein the date of birth of Harpal Singh-appellant was recorded as 14.2.1989. Pleading that as the occurrence had taken place on 16.1.2007, both the appellants were less than 18 years of age, the appellants requested for referring the matter to the Juvenile Justice Board for holding an enquiry so as to determine their ages at the time of the occurrence.

Upon notice, reply was filed by Shri Raj Kumar, HPS, Deputy Superintendent of Police, City, Karnal wherein it was stated that the District Registrar, Births and Deaths, District Karnal had

reported that entry regarding the date of birth of the appellants was not found in the record maintained by the District Registrar. However, as the appellants have been insisting that they were less than 18 years on the date of the incident and, thus, juveniles, a coordinate Bench of this Court vide order dated 8.7.2014 referred the case of the appellants to the Juvenile Justice Board, Karnal for holding an enquiry and to report as to whether the appellants were juveniles on the date of occurrence i.e. 16.1.2007 or not.

After holding a detailed enquiry in which both the parties produced evidence regarding their respective stands, the Principal Magistrate, Juvenile Justice Board, Karnal came to the conclusion that the appellants were below 18 years on the date of the occurrence and, thus, juveniles as per the provisions of the Act of 2000. Report dated 17.9.2014 prepared in that regard and forwarded through the District and Sessions Judge, Karnal is already on the record.

Now the question arises, as to what order and sentence is to be passed qua the appellants for the offences committed by them under Sections 302/34 IPC. Both the appellants have already crossed the age of 25 years and, therefore, it will not be conducive to the environment in the Special Home to keep them there and at any rate, they have already undergone an actual sentence of more than three years, the maximum period provided under Section 15 of the Act of 2000. The Hon'ble Supreme Court in **Lakhan Lal Vs. State of Bihar**, (2011) 2 SCC 251, while seized of similar matter,

sustained the conviction of the convicts therein, but directed their release forthwith. In **Bharat Bhushan Vs. State of Himachal Pradesh**, 2014(1) SCC (Crl.) 576, the Hon'ble Supreme Court, while upholding the conviction of the appellant therein for the offence under Section 376 IPC, set-aside the order of sentence by directing his release from custody. In the present case, as is clear from the custody certificates produced by the State counsel, each of the appellants has already undergone an actual sentence of eight years and thirteen days, which includes post-conviction period of more than five years. Under these circumstances, no useful purpose will be served by keeping the appellants in Special Home. Ends of justice would be amply met by setting-aside their sentences.

Accordingly, the conviction of the appellants under Sections 302/34 IPC is upheld. However, their sentences are set-aside. They are directed to be released forthwith, if not required in any other case.

The appeal is partly allowed to the extent indicated above.

**(T.P.S. MANN)
JUDGE**

October 01, 2015
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**(GURMIT RAM)
JUDGE**