

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

CRA-S-495-SB-2003

Date of Decision: 09.09.2015

Jagbir

Appellant

Vs.

State of Haryana

Respondent

CORAM: Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate,
for the appellant.

Mr. Pawan Kumar, AAG, Haryana.

MAHAVIR S. CHAUHAN, J. (ORAL)

Appellant Jagbir was tried for the offences under Section 307 and 324 of Indian Penal Code, 1860 ('IPC' for short) and after a full-fledged trial, was convict and sentenced to rigorous imprisonment for a term of seven years with fine amounting to Rs.2,000/- and in default of payment of fine, to further rigorous imprisonment for one year under Section 307 IPC and rigorous imprisonment for a term of two years with fine amounting to Rs.500/- and in default of payment of fine, to further rigorous imprisonment for 3 months under Section 324, IPC, vide judgment dated 10.02.2003 and order of sentence dated 13.02.2003, by the learned Additional Sessions Judge, Faridabad.

During the pendency of this appeal, an application was moved on behalf of the appellant to grant him the benefit of juvenility as, according to him, he was a juvenile on the date of occurrence. Report was sought from learned Principal Magistrate, Juvenile Justice Board, Palwal, in this regard.

A report dated 09.07.2015 has been received from the learned Principal Magistrate, Juvenile Justice Board, Palwal, which reads as under:-

“In view of the aforesaid circumstances, the correct date of birth of the accused has to be accepted as given in his Matriculation Certificate issued by Board of School Education, Haryana, wherein the date of birth of Jagbir Singh son of Ram Charan is mentioned as 15.09.1980. The date of occurrence in this case is 09.03.1998. Meaning thereby, that the applicant Jagbir Singh son of Ram Charan was 17 years 11 months and 24 days old on the date of alleged occurrence. As per Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000: “juvenile” or “child” means a person who has not completed eighteenth year of age. Since applicant was 17 years 11 months and 24 days old on the date of alleged occurrence he can safely be placed under the category of Juvenile.”

In view of above, the appellant was less than 18 years of age on the date of the occurrence i.e. 09.03.1998. Though the Juvenile (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act) has come into being in the year 2000 but as held by the Hon’ble Supreme Court in ***Hari Ram vs. State of Rajasthan and another 2009 (2) RCR (Criminal) 878*** and ***Dr. Subramanian Swamy and others vs. Raju through Member Juvenile Justice Board and another, AIR 2014 (SC) 1649*** and followed by this Court in ***Narinder Singh vs. State of Punjab and others 2014(3) RCR (Criminal) 43***, provisions of the Act have retrospective effect. It would be of importance to refer here to the observations made by the Hon’ble Supreme Court in case of Hari Ram (supra), which are to the following effect:-

“The Proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1st April, 2001, where a juvenile, who was below 18 years at the time

of commission of the offence, was involved. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of Clause (I) of Section 2, even if the juvenile ceased to be a juvenile on or before 1st April, 2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.”

Nothing to the contrary could be shown during the course of hearing. Thus, I have no hesitation in holding that on the day of occurrence, the appellant was a juvenile.

In view of the above, while maintaining the judgment of conviction which has not been challenged on behalf of the appellant during the course of hearing, order of quantum of sentence is set aside and the matter is referred to the Principal Magistrate, Juvenile Justice Board, Palwal, for passing appropriate orders as regards the quantum of sentence.

The appellant, through his counsel, is directed to appear before the learned Magistrate Juvenile Justice Board, Palwal, at 10.00 a.m. on 20.10.2015.

(Mahavir S. Chauhan)
Judge

09.09.2015
Dinesh