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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : JANUARY 09, 2015

DECIDED ON : FEBRUARY 04, 2015

+ **CRL.A.32/2014 & Crl.M.B.58/2014, Crl.M.A.No.20106/2014**

RAMBIR @ GHANTA

..... Appellant

Through : Mr.Sitab Ali Chaudhary, Advocate.

versus

STATE

..... Respondent

Through : Ms.Kusum Dhalla, APP.
SI Neeraj Kumar, PS Mandawali.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant-Rambir @ Ghanta impugns a judgment dated 18.08.2012 in Sessions Case No.14/11 arising out of FIR No.559/10 under Section 366/376 (2) (g)/506 IPC registered at Police Station Mandawali by which he was held guilty for committing offence under Section 366/34, 376 (2)(g) and 506/34 IPC. By an order dated 22.08.2012 he was awarded various prison terms with fine.

2. Allegations against the appellant as reflected in the charge-sheet were that on 03.11.2010 at around 4:45 a.m. near Shani Mandi,

Ganesh Chowk, he along with his associates committed rape upon 'X' (assumed name). FIR was registered on the complaint of the prosecutrix 'X'. The appellant and his associates were apprehended and arrested. Statements of witnesses conversant with the facts were recorded. Exhibits were sent to Forensic Science Laboratory for examination. After completion of investigation, a charge-sheet was filed against the appellant and co-convicts. The prosecution examined 18 witnesses to prove its case. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. The trial resulted in his conviction as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal.

3. During the course of arguments, Crl.M.A.No.20106/2014 under Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 was filed by the appellant claiming juvenility on the day of incident. Prayer was made to release him under Rule 98 of the Juvenile Justice (Care & Protection of Children) Rules, 2007. State has filed status report informing that at the time of arguments on the point of sentence, the appellant had disclosed his age around 20 years.

4. The date of incident is 3.11.2010. Admitted position is that the appellant was also arrested in case FIR No.124/09 under Section

379/34 IPC registered at Police Station Sun Light Colony, Delhi. I have scrutinized the trial court record pertaining to the said FIR. On 23.07.2012, when the appellant was produced before the court in the said proceedings, the learned Magistrate observed that the appellant appeared to be below 18 years old. Since he was unable to produce any School Leaving Certificate, the Investigating Officer was directed to do age determination test. Subsequently, age determination test was conducted by the Medical Board where his age was opined to be between 18 to 20 years. By an order dated 30.08.2012, the appellant was declared juvenile and sent for trial before Juvenile Justice Board-II as the date of offence was 22.12.2009.

5. Status report filed in the instant appeal affirms that age determination test was conducted on 24.08.2012 in Case FIR No.124/09 registered at Police Station Sun Light Colony, Delhi and the age was determined 18-20 years as on that day. There is nothing in the status report to reveal if the petitioner had attended any school or his date of birth was recorded in the record of municipal authorities. State has not alleged any other specific date of birth of the appellant. Findings of the trial court in FIR No.124/09 registered at Police Station Sun Light Colony declaring the appellant juvenile were not challenged and have attained

finality. Nominal roll reveals that the appellant has already undergone the sentence awarded to him in the said proceedings on 20.09.2012.

6. Since the appellant has already been declared juvenile, taking into consideration the age determination test conducted on 24.08.2012 where his age was ascertained as 18-20 years, the appellant is to be considered as juvenile in the instant case also as the date of incident is 3.11.2010.

7. Consideration the observations of the Hon'ble Supreme Court in *Mohan Mali & Anr. vs. State of Madhya Pradesh* (2010) 6 SCC 669 in para 12,13 and 14 and having regard to the fact that the appellant-Rambir @ Ghanta was minor on the date of commission of offence and has already undergone more than the maximum sentence provided under Section 15 of the Juvenile Justice (Care & Protection of Children) Act, 2000, by applying the provisions of Rule 98 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 read with Section 15 and 64 of the Juvenile Justice (Care & Protection of Children) Act, 2000, appeal filed by the appellant is allowed. Pending applications also stand disposed of. The appellant be released forthwith if not required to be detained in any other case.

8. Trial Court record along with a copy of this order be sent back forthwith. A copy of the order be sent to Jail Superintendent, Tihar Jail for intimation.

(S.P.GARG)
JUDGE

FEBRUARY 04, 2015
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