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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. No.374/2015 & CrI.M.A. No.3841/2016**

Date of Decision: 20th October, 2016

RUDERMANI @ RUKMANI Appellant
Through Mr.Ajay Verma, Adv.
Appellant in custody.

versus

STATE (GNCT OF DELHI) Respondent
Through Ms.Aashaa Tiwari, APP for State.

HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI
GITA MITTAL, J (Oral)

1. The police has undertaken the exercise of verification of the extract of the Parivar Register maintained by the Gram Panchayat, PS Bhatpara Rani, Village Bhaiyari Bhagel, District Devaria. As per status report dated 27.05.2016, no authentication of the document relied upon by the appellant was possible.

2. On 30.08.2016, we had observed that the document relied upon by the appellant was not reliable. Consequently, the medial examination of the appellant was directed to be conducted by the medical Board of Deen Dayal Upadhyay Hospital to ascertain the probable age of the appellant.

3. It appears from the record before us that no reliable documentary evidence regarding date of birth of the appellant is available. Therefore, in accordance with the mandate of Rule 12 (3)(b) of the Juvenile Justice

(Care and Protection of Children) Rules, 2007, we had caused the medical examination of the appellant to have his bone age declared by a duly constituted Board as on 07.09.2016, when he was subjected to the examination.

4. A report dated 28.09.2016 has been received from the Central Jail, Tihar, placing before us the result of the Bone Age Report of the appellant conducted by the medical board on 07.09.2016. The dental and X-ray reports were taken up to determine the bone age of the appellant. In the opinion dated 08.09.2016 under the signatures of Dr. Anand Singh Kushwaha (Medical Officer), Department of Radiologist, DDU Hospital as well as other doctors of the Board, constituted by the Medical Superintendent placed before us, it has been opined after appropriate medical examination that the age of the appellant is between 22 to 30 years.

5. The instant case is concerned with the commission of the offence on the intervening night of 15th/16th October 2011. Consequently, in accordance with Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 the age of the appellant has to be considered on the lower side within the margin of one year. Also calculating the age of the appellant in terms of the opinion of the Medical Board, he is to be considered as 22 years with the margin of one year on the lower side i.e. 21 years as on date. As such, the appellant would be deemed to have

been 16 years as on 15th/16th October 2011, i.e. the date of commission of the offence. Therefore, the appellant is entitled to benefit of being considered as juvenile within the meaning and expression under Section 2(35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and is entitled to benefit thereunder.

6. The appellant was convicted for commission of the offence under Sections 302/392/397/34 & Under Sections 25/27/54/59 of the Arms Act of the IPC by the judgment dated 22.08.2014 and by order dated 03.09.2014, the appellant stood sentenced to rigorous imprisonment for life for both the offences as well as fine of Rs.1 lac and fine of Rs.5,000/- for commission of offence under Section 392/397 of IPC. For commission of offence under Section 25 read with Section 27 of the Arms Act, the appellant was separately sentenced to rigorous imprisonment of 5 years and fine of Rs.5,000/-.

7. In view of the above discussion, it is clear that the appellant was juvenile on the date of the commission of the offence and consequently on account of operation of the provisions of the Juvenile Justice (Care & Protection of Children) Act, 2015, the order dated 3rd September, 2014 imposing the sentence cannot stand in law.

8. We are informed that the appellant has already undergone incarceration in the regular prison for more than five years and three months which is more than the sentence he would have undergone under

the Juvenile Justice (Care & Protection of Children) Act. He could not have been incarcerated even for one day more. He is, therefore, liable to be set at liberty forthwith.

9. Pursuant to our last order, the appellant has been produced in custody. We have examined him and he has stated that he does not wish to pursue the appeal so far as the judgment on conviction is concerned.

10. We are informed by Ms.Aashaa Tiwari, learned Additional Public Prosecutor for the State that the co-convict Sunil has filed Crl.Appeal No.1541/2014 while co-convict Rohit Kumar has filed Crl.Appeal No.139/2015.

In view of the above, it is directed as follows:-

- (i) The order on sentence dated 3rd September, 2014 is hereby set aside and quashed.
- (ii) The appeal assailing the judgment dated 22nd August, 2014 is disposed of as not pressed.
- (iii) The Appellant – Rudermani @ Rukmani @ Guderia @ Rohit shall be released from custody immediately, if not required in any other case
- (iv) It is made clear that nothing herein contained is an expression of opinion on the merits of the challenge laid to the impugned judgment dated 22nd August, 2014 and the order on sentence dated 3rd September, 2014.
- (v) It shall be open for the appellants in Crl. Appeal Nos.1541/2014 &

139/2015, to press their appeals on all available grounds.

(vi) The Registry shall ensure that copy of this order is sent by special messenger to the concerned Superintendent, Jail, so that the appellant is released from jail today itself, if not wanted in any other case.

This appeal and application are disposed of in the above terms.

Copy of this order be given dasti under the signatures of the Court Master of this Court.

(GITA MITTAL)
JUDGE

(P.S.TEJI)
JUDGE

OCTOBER 20, 2016
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