

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

**Criminal Appeal D-11-DB of 2011(O&M)
Date of Decision: January 23, 2017**

Karambir @ Kaliyaa	Versus	Appellant
State of Haryana		 Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE H.S.MADAAN**

Present : Mr. Balraj Gujjar, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S.MANN, J.

The appellant alongwith Mahavir Singh, Subhash, Manjit Pahalwan, Sanjit and Kuldeep was charged for committing offences punishable under Sections 302, 307 and 341 read with Section 109 IPC. He was also charged for committing the offence punishable under Section 25 of the Arms Act. During the course of the trial, Kuldeep accused was found to be a juvenile in conflict with law and, accordingly, his case was segregated and sent to the Juvenile Justice Board, Bhiwani. Vide judgment and order dated 28.10.2010, learned Additional Sessions Judge-III, Bhiwani, acquitted Mahavir Singh, Subhash, Manjit Pahalwan and Sanjit accused of the charges against them. The appellant was also

acquitted of the charges under Sections 307 read with 109 IPC and Sections 341 read with 149 IPC. He was, however, convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- and in default thereof, to undergo simple imprisonment for six months. He was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for ten days.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, notice of which was issued to the State and record of the trial Court requisitioned.

During the pendency of the appeal, the appellant preferred miscellaneous application, i.e. CRM-32522 of 2015 under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act') stating therein that on the date of the occurrence, i.e. 13.5.2008, he was 16 years of age, and thus, a juvenile. In this regard, he placed on record copy of the ration card dated 26.8.2008. He also placed on record the birth certificate dated 27.8.2012, wherein, his date of birth stood mentioned as 14.2.1991. Accordingly, he prayed that he be declared juvenile and as he had undergone a period of more than seven years behind the bars, he be released immediately.

Upon notice of the aforementioned application, learned State counsel filed the reply by way of affidavit of Shri Rajbir Singh, H.P.S. Deputy Superintendent of Police, Loharu, District Bhiwani, wherein, it was stated that as per the verification conducted by the local police, the date of birth certificate issued by the competent authority was got duly verified and the date of birth of the appellant was found to be 14.2.1991. Hence, he was 17 years and 3 months old on the date of occurrence. The application was, however, opposed on the ground that it had been filed at a belated stage and the appellant ought to have been submitted his age proof before the learned trial Court, when the trial was on.

On 13.7.2016, this Court directed Principal Magistrate, Juvenile Justice Board, Bhiwani, to conduct an inquiry in order to determine as to whether the appellant was less than 18 years of age on the date of commission of the crime. Pursuant to the same, report was received from the Principal Magistrate, Juvenile Justice Board that inquiry on the aforementioned issue was conducted and after going through the material produced by the parties, it came to the conclusion that the appellant was juvenile on the date of occurrence being seventeen years two months and thirty days old.

Learned State counsel has submitted that he is not in a position to challenge the findings arrived at by the Principal

Magistrate, Juvenile Justice Board, in relation to the age of the appellant. Under these circumstances, this Court has no other option but to hold that the appellant was entitled to claim protection under the Act being less than 18 years of age on the date of the commission of crime.

As regards the conviction of the appellant, learned counsel representing him has failed to point out any error in the judgment of conviction passed by the trial Court. He has, however, submitted that the fine imposed upon the appellant is highly excessive, especially, when the father of the appellant is no more and the house is being run by his mother.

We have gone through the impugned judgment of conviction passed by the learned trial Court as well as the records and do not find any ground to hold that the trial Court was not justified in convicting the appellant. That being the position, the trial Court did not commit any error while passing the impugned judgment of conviction. However, the question arises as to whether the appellant, who has since attained majority can be sent to Remand Home for the reason that he was juvenile on the date of the commission of the crime. Further, whether the fine imposed upon the appellant is justified or needs to be reduced.

Having heard learned counsel for the parties, this Court is of the view that the appellant, who, at present is about 26 years of age and has already undergone a period of more than 8

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½ years need not to be sent to Remand Home. At the same time, the fine of Rs.50,000/- imposed upon him for the offence under Section 302 IPC is on the higher side and needs to be reduced considerably.

Resultantly, the conviction of the appellant under Section 302 IPC and Section 25 of the Arms Act is upheld. The sentences of imprisonment imposed upon him are set-aside. The fine of Rs.50,000/- imposed upon him for the offence under Section 302 IPC is reduced to Rs.10,000/- whereas the fine of Rs.1,000/- for the offence under Section 25 of the Arms Act is maintained. The appellant shall be released subject to deposit of total fine of Rs.11,000/-, unless he is required in connection with any other case.

The appeal and the miscellaneous application are, accordingly, disposed of.

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

January 23, 2017
amit rana

**(H.S.MADAAN)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No