

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

Crl. Misc. 38 and 40 of 2017 in/and
Crl. Appeal S 4 SB of 2017 (O&M)
Date of decision: 7.8.2018

Karan @ Ghoni

...Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Hitesh Verma, Advocate,
for the applicant/appellant.

Ms. Rajni Gupta. Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed against the impugned judgment and order of sentence dated 13.10.2016 passed by the Additional Sessions Judge, Hoshiarpur in Sessions case No. 7 dated 24.3.2015, vide which the appellant was convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of seven years.

2. In brief, the facts are that a statement was made by the prosecutrix in which it was alleged that her date of birth was 7.10.2000 and she was a student of 9th Class. It was further alleged that on 5.12.2014, when she left her house for Gurudwara Shahidan, then the appellant herein caught her and forcibly took her towards the Northern side of the road. She raised noise and requested the appellant to let her go to but of no avail. It

was further alleged that the appellant took her for about 1/2 kilometer away and there committed the offence of rape. It was further alleged that on the next day i.e. 6.12.2014 at about 5 p.m., she managed to escape and on reaching her house, she disclosed the entire episode to her mother. It is on these allegations that the FIR was registered and the appellant was arrested on 8.12.2014. After completion of the investigation, the challan was presented and since the offence was triable by the Sessions Court, the same was committed by the Illaqa Magistrate to the Sessions Court.

3. The prosecution examined as many as 13 witnesses and after closure of prosecution evidence, statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded, in which he denied all the allegations and pleaded innocence. The trial court, after going through the record and hearing learned counsel for the parties, convicted the appellant, as stated above.

4. Learned counsel for the appellant herein submits that during the pendency of the trial itself, an application was filed for declaring the appellant to be a juvenile. It was contended that his date of birth was 5.12.1997 and on the date when the alleged occurrence took place he was a juvenile and, therefore, he should be treated as such. Vide order dated 8.9.2016 passed by the trial court, a Board of Doctors was constituted and an opportunity was given to the appellant to produce evidence in support of his claim of being a juvenile. On 17.9.2016 one witness was produced by the appellant and an application was moved to summon the record from the concerned department regarding his age. However, the trial court in a hasty

manner declined the request of the appellant and closed his evidence, vide order dated 19.9.2016, without appreciating the fact that the summoning of record was necessary for determining the issue.

5. Against the said order, a Criminal Revision 3591 of 2016 was filed but during the pendency of the revision petition closing the evidence of the appellant, the trial court convicted him and resultantly, the revision petition was dismissed as withdrawn with liberty to the appellant to take the plea of juvenility while filing the appeal qua the judgment of conviction. Consequently, the appellant, while filing the appeal, annexed his date of birth certificate dated 17.10.2016 as Annexure A/1 which was taken on record. By order dated 10.1.2017, the appeal stands admitted and notice in the Criminal Misc. Nos. 38 and 40 of 2017, one for suspension of sentence and another for declaring the appellant as juvenile respectively, was issued for 21.2.2017.

6. Learned counsel appearing on behalf of the applicant/appellant, while assailing the judgment in appeal, contends that the Birth Certificate dated 17.10.2016 has been issued by the Additional District Registrar, Births and Deaths, Hoshiarpur, which would reflect that his date of birth was recorded as 5.12.1997 and, therefore, on the date of the alleged incident, the applicant/appellant was a juvenile and should have been treated as such. It is also argued that since the appellant was a juvenile at that point of time i.e. on the alleged date of occurrence, therefore, he was covered under Section 15 (g) of the Juvenile Justice (Care and Protection of Children) Act, 2007 where the maximum sentence that could be awarded to

a juvenile is three years and the appellant has already undergone a sentence of 2 years, 2 months and 26 days, including remission of 15 days, as per the custody certificate dated 18.7.2018 and, therefore, without assailing the conviction, it is prayed that the sentence awarded to the appellant be reduced to the period already undergone.

7. Per contra, learned counsel for the respondent—State submits that the trial court, after appreciating the evidence brought on record, has rightly convicted the appellant. She further submits that the application of the applicant/appellant declaring him to be juvenile was rightly dismissed by the trial court, while relying upon the report of the Board of Doctors so constituted and as such, the application for declaring the applicant/appellant as juvenile deserves to be dismissed.

8. I have heard learned counsel for the parties have also perused the pleadings of the case.

9. As already noted, notice in the applications for suspension of sentence and for declaring the applicant/appellant as juvenile was issued for 21.2.2017. By order dated 21.2.2017, this Court took notice of the contention raised by the applicant/appellant that his date of birth is 5.12.1997 and that he was a juvenile at the time of alleged incident. Consequently, a direction was given to the District & Sessions Judge, Hoshiarpur, to make an inquiry with respect of the said Birth Certificate and submit a report in this regard. The report of the District & Sessions Judge, Hoshiarpur, has been received. During the inquiry by the District & Sessions Judge, statement of Bhupinder Singh Junior Assistant Office of

Civil Surgeon, Hoshiarpur, was recorded and he deposed that in the original Birth Register there is entry qua birth of Karan Sandhu son of Harmesh Kumar showing place of birth Ghumiala, Police Station Mahilpur, at page No. 233 against serial No. 12 dated 15.12.1997. Jaswinder Singh, Statistical Assistant Office of the Civil Surgeon, Hoshiarpur, also deposed on the similar lines.

10. The applicant/appellant was also summoned by the Court and his statement was recorded, wherein he stated that he was born on 5.12.1997 in Village Ghumiala, District Hoshiarpur. He also produced birth certificate bearing No. T-118334 dated 17.10.2016, while stating that he got the certificate after making application to the office of the Chief Medical Officer, Hoshiarpur. Dr. Sewa Singh, Additional District Registrar, Civil Hospital, Hoshiarpur was also summoned who affirmed the date of birth of the applicant/appellant, while narrating that the certificate was issued on an application filed by one Mukesh Sandhu, who happens to be brother of the applicant. A copy of the application was also produced on record.

11. Another statement was recorded of Jaswinder Singh, Superintendent, who also stated that on 17.10.2016 Mukesh Sandhu had filed an application for issuance of birth certificate of Karan Sandhu and on perusal of the record, the said certificate was prepared. Statement of Dr. G.S. Kapoor was also recorded about signing of the birth certificate after the same had been perused.

12. After perusal of the statements that have been recorded, the District & Sessions Judge, Hoshiarpur, came to the conclusion that there is

possibility that the relevant entries in the register have been manipulated and accordingly submitted the report. In the said report, the District & Sessions Judge, Hoshiarpur, took note of the fact that during the trial, the appellant moved an application for conducting an inquiry qua his juvenility and on the said application the trial court had directed the Chief Medical Officer, Hoshiarpur, to constitute a Board of Directors so as to examine the accused/appellant. His claim for being treated as juvenile was rejected because at that time he had only relied on a ration card and had tendered in evidence the certificate of the accused/appellant, which was signed by the Head Teacher, Government Elementary School, Ghumiala, District Hoshiarpur, reflecting his date of birth as 5.12.1995. The District & Sessions Judge formed an opinion that there could be possibility of manipulation of the birth certificate.

13. Having perused the record and gone through the statements that have been recorded, this Court finds it difficult to believe that all the public servants, who were responsible for maintaining the record would either manipulate or depose falsely to help the applicant/appellant. Responsible officers like, Dr. Sewa Singh, Additional District Registrar, Civil Hospital, Hoshiarpur and Jaswinder Singh, Superintendent of the office of Civil Surgeon, Hoshiarpur, have, after verifying the original record, stated that the date of birth as reflected on the record is 5.12.1997, as such the veracity of such statements could not be doubted. Moreover, the date of birth mentioned in the Birth Certificate is in consonance with the date mentioned in the school leaving certificate.

14. For the reasons afore-stated, Criminal Misc. 40 of 2017 is allowed. The applicant/appellant is declared to be a juvenile on the date of incident i.e. 5.12.2014, his date of birth being 5.12.1997.

15. Consequently, while upholding the impugned judgment of conviction, the sentence awarded to the appellant is reduced to the period already undergone by him because as terms of Section 15 (g) of the Juvenile Justice (Care and Protection of Children) Act, the maximum sentence that can be awarded to a juvenile for such incident is of three years.

16. The application as well as the appeal stand disposed of accordingly.

7.8.2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No