

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

CRA-D-730-DB-2002

Date of decision: 25.9.2019

Mahender

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN**

Present: Mr.Angel Sharma, Advocate for
Mr.DD Sharma, Advocate for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

1. The present appeal has been directed against the judgment of conviction and order of sentence dated 27.8.2002 (hereinafter referred to as 'impugned judgment') passed by learned Additional Sessions Judge (Adhoc), Faridabad (hereinafter as 'trial Court'), whereby the accused-appellant was convicted for the commission of offence punishable under Sections 302 and 201 of the Indian Penal Code (for short 'IPC') and was awarded sentence of life imprisonment with a fine of Rs.20,000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. He was further sentenced to undergo rigorous imprisonment for a period of two years under Section 201 IPC. Both the substantive sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that on 7.7.2001, Than Singh had gone to Faridabad leaving his two sons and four daughters, including Rajni at his house. He returned in the evening at about 6 p.m. and found that Rajni was missing. Pinky another daughter of Than Singh told him that Rajni had left the house at about 12 noon saying that she was going to ease herself, and that Mahender was seen going after her. Rajni did not return thereafter. Than Singh went to the police station alongwith others and they were advised to search for the girl at all possible places. When Rajni could not be traced, Than Singh ultimately went to Police Post Amarpur on 9.7.2001 to report the matter and made application Ex.PD to Amarjeet Singh, Officer Incharge of Police Post Amarpur. After appending his endorsement Ex.PD/1, he sent the same to Police Station Chandhat, where HC Sobha Chand recorded the FIR Ex.PD/2.

3. Statements of the witnesses were recorded and accused Mahender was arrested from his house on 9.7.2001. On his disclosure statement Ex.PH the dead body of Rajni was got recovered from the bushes behind the tubewell at Mujheri Mor. Site plan Ex.PJ was prepared. Inquest proceedings were conducted and report Ex.PK was prepared. The dead body was sent to General Hospital, Ballabgarh, from where it was referred to BK Hospital, Faridabad. Dr.Sanjeev Kumar, Medical Officer, BK Hospital, Faridabad referred the dead body to PGIMS Rohtak for postmortem as the same was decomposed. On 11.7.2001, postmortem of the dead body was conducted at PGIMIS Rohtak by Dr. Luv Kumar Sharma, Department of Forensic Medicines. There were no symptoms of poisoning. There was

history of death by strangulation. The dead body had a chunni as the ligating material around the neck had one knot and two free ends. There were ligature marks and the dead body was smudged with grass and maggots were crawling all over. Vaginal swabs and slides were taken. The cause of death was opined to be asphyxia due to strangulation. The swabs and slides were sent to Forensic Science Laboratory, Madhuban, Haryana and after completion of investigation,, report under Section 173 Cr.P.C. was prepared and filed in the Court.

4. Charges under Sections 363, 366, 376, 302 & 201 IPC were framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as 17 witnesses, namely, Dr. SK Bhagat as PW1, SI Vishnu Dutt as PW2, Bhudev as PW3, Hazari Lal as PW4, Surjit Singh as PW5, Than Singh as PW6, Munesh as PW7, Ram Avtar as PW8, Raj Kumar as PW9, Rati Ram as PW10, Maqsood Ali as PW11, Virender as PW12, SI Amarjeet as PW13, Maqsood Ahmed as PW14, HC Sobha Chand as PW15, Dr.Luv Kumar Sharma as PW16 and Ashok Kumar Draftsman Constable as PW17.

6. Thereafter, the accused was examined under Section 313 Cr.P.C., all the incriminating circumstances appearing in evidence against him in the prosecution evidence were put, to which he denied and claimed innocence.

7. After hearing learned counsel for both the parties, learned trial Court convicted and sentenced the accused-appellant for the offence and term as indicated at the outset in para 1 hereinabove.

8. Heard.

9. Learned counsel for the appellant states that he does not want to press the appeal on merits. He further states that during the pendency of the appeal, the appellant had moved an application for declaring him to be a juvenile. On the basis of the report dated 19.11.2015 received from the PMJJB, Faridabad, the appellant was held to around 17 years 6 months and 11 days of age as on the date of incident and as such a juvenile as on the date of occurrence.

10. Hon'ble the Supreme Court in **Amit Singh vs. State of Maharashtra and another 2011(3) RCR (Criminal) 859** has held as under:-

9) The relief prayed for in this writ petition is squarely covered by the law laid down in the case of Hari Ram (supra) whereby this Court had occasion to consider the question elaborately regarding applicability of the Act. This Court considered the decision of the Constitution Bench in the case of Pratap Singh vs. State of Jharkhand & Anr., (2005) 3 SCC 551, wherein this Court formulated two points for consideration:

A. Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the Court/Competent Authority?

B. Whether the Act of 2000 will be applicable in

the case a proceeding is initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 01.04.2001?

The Constitution Bench in the above case held that the benefit of juvenility cannot be extended to the person who has completed the 18 years of age as on 01.04.2001 i.e. the date of enforcement of the Act. In the background of this judgment, the Legislature brought Amendment Act 33/2006 proviso and explanation in Section 20 to set at rest doubts that have arisen with regard to the applicability of the Act to the cases pending on 01.04.2001, where a juvenile, who was below 18 years of age at the time of commission of the offence, was involved. The explanation to Section 20 which was added in 2006 makes it 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 (1) of Section 2, even if juvenile ceased to be a juvenile on or before 01.04.2001, when the Act 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. 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 Board concerned for passing sentence in accordance with the provisions of the Act.

10) After the judgment of the Constitution Bench in Pratap Singh (supra), this Court in the case of Hari Ram (supra) considered the above question of law in the light of Amendment Act 33 of 2006 in the provisions of the Act which substituted Section 2(l) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence". By way of Amendment Act 33/2006, Section 7A was inserted which reads as follows:-

"7A. Procedure to be followed when claim of juvenility is raised before any court.--(1)

Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such

person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under subsection (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect. "

It is clear from the above provision, namely, Section 7A the claim of juvenility to be raised before any court at any stage, even after final disposal of the case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. Apart from the aforesaid provisions of the Act as amended, and the Juvenile Justice (Care and Protection of Children) Rules,

2007, (in short 'the Rules') Rule 98, in particular, has to be read along with Section 20 of the Act as amended by the Amendment Act, 2006 which provides that even after disposal of cases of juveniles in conflict with law, the State Government or the Board could, either suo motu or on an application made for the purpose, review the case of juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years. All the above relevant provisions including the amended provisions of the Act and the Rules have been elaborately considered by this Court in Hari Ram (supra).”

11. This Court is sitting in appeal over the judgment passed by the trial Court and that being so, the correctness of the findings returned by the learned trial Court in the background of the prosecution evidence has to be appreciated. On delving into the prosecution evidence with care, it emerges that the findings are in the line of evidence on record and the same calls for no interference. Accordingly, the conviction of Mahender accused is upheld.

12. According to the report dated 19.11.2015 of PMJJB, Faridabad, the appellant was juvenile at the time of commission of offence and therefore, he is entitled to get the benefit of provisions under Sections 2(I), 7A, 20 and 64 of the Juvenile Justice (Care and Protection of Children), Act

(for short 'the Act'). As per Section 15 of the Act, the maximum sentence provided is three years. As per the custody certificate, the appellant has already undergone 7 years, 1 month and 13 days including remission, which is more than the maximum period for which a juvenile may be confined in a special home. Taking into consideration the entirety of facts and circumstances of the instant case, the order of sentence dated 27.8.2002 is modified to the extent that the appellant is ordered to be sentenced to the period already undergone by him in this case. However, the sentence of fine imposed by the trial Court and its default stipulation shall remain intact. The appellant is directed to deposit the fine, if not deposited, within two months from today. With this modification in the order of sentence, this appeal is partly accepted.

[JITENDRA CHAUHAN]
JUDGE

25.09.2019
gsv

[HARMINDER SINGH MADAAN]
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No