

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 942 of 2013**

1. Krishna Giri S/o Kalamsai Giri, aged about 18 Years, R/o Village Devtikra, P.S. Udaipur, Civil & Revenue District Surguja (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through P.S. Udaipur, Civil & Revenue District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate.
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Shri Prashant Kumar Mishra J.****02/03/2020**

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 30/07/2013 passed by 1st Additional Session Judge, Ambikapur, District Surguja (C.G.) in Session Trial No. 311/2010; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 364 of Indian Penal Code (in short "IPC")	R.I. for life and fine of Rs. 5,000/-
U/s. 302 of IPC	R.I. for life and fine of Rs. 5,000/-
	In default of payment total fine of Rs. 10,000/- accused/appellant shall undergo additional R.I. for 6 months

- 2) The conviction and sentence is for committing murder of deceased Ujit Giri during the period of 27/03/2010 to 30/03/2010.
- 3) It was alleged that the appellant kidnapped the deceased aged

about 11 years, looted the gold ear ring valued at Rs. 2,000/- and committed his murder after which he threw the dead body in a CPT pit inside Bhuihari Patra Forest Nursery. We are not referring to the evidence in detail for the nature of order we are passing today in this appeal. Suffice it would be to mention that the appellant has been convicted on the basis of evidence of last seen together by PW-02 Sipahiya Giri and PW-04 Devraj; recovery of dead body at his instance and the recovery of gold ear ring belonging to the deceased.

- 4) During pendency of the appeal, the appellant raised plea of juvenility stating that his exact date of birth is 05/06/1992, therefore as on the date of occurrence he was less than 18 years of age, to be exact, he was aged 17 years and 10 months. This Court thereafter referred the matter to the Trial Court to make an inquiry and return the findings about the appellant's juvenility on the date of occurrence.
- 5) The Trial Court has sent the report opining that appellant's date of birth appears to be 10/09/1990 and not 05/06/1992, therefore, he is not a juvenile.
- 6) Challenging the finding of the Trial Court, Shri Shakti Raj Sinha, learned Counsel for the appellant would submit that there are atleast five documents originating from the Primary School where the appellant studied from Class-I to Class-V showing his date of birth as 05/06/1992 against which the Trial Court has given more credence to a single isolated xerox copy of Aganbadi Attendance Register mentioning his date of birth as 10/09/1990. Therefore, Trial Court's finding on the issue of juvenility is perverse and not acceptable.
- 7) Per contra, the State Counsel has supported the finding returned by the Trial Court.
- 8) We have seen the report of the Trial Court as well as complete record in respect of the inquiry regarding the juvenility of the

appellant. Ex. A/1C is the Aganbadi Attendance Register of the year 1993 mentioning the date of birth of appellant as 10/09/1990. The next document is the original Mark Sheet of Primary School Certificate Examination, 2005 (Ex. A/3) which bears signature of the Head Master of Primary School Deotikra, Block Udaipur, Centre Superintendent-cum-Block Education Officer, Secretary District Primary Certificate Examination, Ambikapur and the District Education Officer, Ambikapur. Since Vth Standard examination is a Board Examination, these four officers including the senior most officer of the School Education Department at the district level have signed the Mark Sheet of the appellant wherein his date of birth is entered as 05/06/1992. *Dakhil-Kharij Register* of the Primary School where the appellant was admitted to Class-I has been filed and proved as Ex. A2C. In this document also the appellant's date of birth is entered as 05/06/1992. It is also written in words "*Fifth June year Nineteen Ninety Two*". The date of entry in the School is mentioned as 03/07/2000 and date of leaving the School is mentioned as 01/07/2005. It carries the signature of the Head Master of Primary School, Deotikra quoting the date 01/07/2005 when the appellant left the School. This document is thus about 5 years old from the date of incident and there is no possibility of concoction of the Vth Class Mark Sheet and the *Dakhil-Kharij Register*. The record also contain declaration of the appellant's father Kalamsai Giri which was submitted to the School at the time of admitting the appellant in Class-I. The declaration also says that the appellant's date of birth is 05/06/1992. Although there is some over writing in this declaration but in the previously written figures and words, the year of birth of the appellant was wrongly mentioned as 1996 which was later on corrected as 1992. If the appellant wanted to concoct this document to show him to be a juvenile, it was rather easier for him to have maintained the year of birth as 1996 which makes him 4 years younger than what he claims to be. Thus, the correction in this document would not negate or dilute the appellant's stand about his juvenility.

- 9) As against the documents of credible nature emanating from the School from where the appellant passed his Vth Class Board Examination, the Trial Court found him not to be a juvenile only on the basis of one single entry in the Aganbadi Attendance Register. In our considered view the Trial Court's finding is not correct. The appellant's date of birth appears to be 05/06/1992 and as such on the date of occurrence he was a juvenile being aged less than 18 years.
- 10) In view of the above, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The matter is remitted back to the jurisdictional Juvenile Justice Board for exercising jurisdiction for disposal of the appellant's case in accordance with law within a period of one month from the date of production of the appellant before the Board for the reason that the appellant has already suffered jail sentence of about 10 years which is much more than the maximum period for which a juvenile can be sent to the Special Home. The appellant shall be produced before the concerned Juvenile Justice Board on 18/03/2020. Registry to send the record of the case to the concerned Juvenile Justice Board forthwith.

-Sd/-
(Prashant Kumar Mishra)
Judge

-Sd/-
(Gautam Chourdiya)
Judge