

CRR-3503-2016(O&M) &
CRR-3980-2016(O&M)

-1-

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

(1)

CRR-3503-2016(O&M)

Alka

...Petitioner

Versus

State of Haryana and another

...Respondent

(2)

CRR-3980-2016(O&M)

Alka

...Petitioner

Versus

State of Haryana and another

...Respondents

Date of Decision:-12.3.2020

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sandeep Kumar, Advocate for
Mr.Vikram Singh, Advocate
for the petitioner in both revision petitions.

Ms.Dimple Jain, AAG, Haryana.

Mr.Sarfraj Hussain, Advocate
for respondent No.2 in both revision petitions.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two criminal revisions i.e. **CRR-3503-2016(O&M) & CRR-3980-2016(O&M)** filed by petitioner Alka.

Briefly stated the facts of the case are that accused Kuldeep faced trial by Additional Chief Judicial Magistrate, Palwal in a case FIR No.279 dated 7.12.2012 for the offences under Sections 279 and 304-A IPC, registered with Police Station Chandhut on the allegations that on 6.12.2012 at about 5:00 p.m. in the area of village Badoli, he drove his Marshal jeep at a fast speed in a rash and negligent manner and hit it against Tanush son of Vasdev; resultantly he suffered injuries to which he had succumbed.

Vide judgment dated 16.10.2015, accused Kuldeep was convicted for the offences under Sections 279 and 304-A IPC and he was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default thereof to further undergo simple imprisonment for a period of one month for the offence under Section 279 IPC and further to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo simple imprisonment for three months for the offence under Section 304-A IPC. Both the sentences were ordered to run concurrently. In the judgment, the age of the accused is mentioned to be 25 years.

The accused had preferred an appeal to the Court of Sessions challenging the judgment of conviction and sentence.

Smt.Alka, mother of the deceased had also preferred an appeal seeking modification of sentence of accused under Sections 302 and 201 IPC instead of 279 and 304-A IPC and awarding sentence for whole of life to the accused.

The appeals were assigned to Additional Sessions Judge, Palwal.

In the appeal filed by the appellant/accused, he had moved an application for declaring him as a juvenile. Accordingly, he was given an opportunity to lead evidence on that point. During the course of his evidence, accused/applicant had examined his father AW1 Dharam Singh and produced attested copy of Middle Class Examination Certificate issued by Board of School Education, Haryana as Ex.AW1/A.

Learned Additional Sessions Judge, Palwal had accepted the application. The operative part of the judgment for ready reference is being reproduced as under:

11. It can be appreciated that Dharam Singh, AW1, father of the applicant /accused has deposed of the fact that accused was born on 16.8.1995 and he was admitted at Dharam Public School, Sultanpur in 1st Standard and studied there up to 10th class. He has passed middle examination from the Board of School Education, Hayrana in 2010 and the copy of the matriculation certificate Ex.AW1/A has been placed on record.

12. Counsel for the complainant assisting learned Public

Prosecutor for the State has cross-examined the father of the accused suggesting that wrong date of birth has been mentioned and infact date of birth is 26.4.1988. In this regard he has been confronted with driving licence of his son wherein date of birth is 26.4.1988. This witness Dharam Singh has clarified that this date was not disclosed by him and his wrong date of birth of his son.

13. Now question before this court is whether on the basis of plea of accused in statement under section 313 Cr.P.C or the driving licence his claim to be treated as Juvenile can be rejected at this stage.

*14. As a matter of law it is now settled that section 7-A of the Juvenile Justice (Care of Protection of Children) Act, 2000, allows a claim of Juvenility to be raised before any court at any stage even after final disposal of the case and speaks of the procedure which the court is required to adopt when such claim of Juvenility is raised. Reliance in this regard can be placed on Judgment of Hon`ble Supreme Court of India, in case titled as **Mohan Mali vs State of M.P. (SC) 2010(2)RCR(Criminal)838** and also in case titled **Narinder Singh vs State of Punjab and others, 2014(3) RCR (Criminal), 43.***

*15. Further in this regard, Judgment of Hon`ble Supreme Court of India in **In Arnit Das v. State of Bihar**, [(2000) 5 SCC 488], is relevant where Hon'ble Court held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical*

approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases.

16. Rule 12 Juvenile Justice (Care & Protection of Children) Rules, 2007 indicates that the age determination inquiry by the court or Board, by seeking evidence, is to be derived from:

(I) the matriculation or equivalent certificates, if available, and in the absence of the same;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

17. In the case in hand certainly driving licence of the accused is piece of evidence which if considered discredits the matriculation certificate, however, the province of law is that matriculation certificate should be given credence against all other documentary. As a matter of common knowledge procurement of the driving licence on false date of birth is easier than procurement of a forged matriculation certificate. There is nothing to show that the matriculation certificate is forged document but certainly with regard to driving license now it can be said that it is either forged or based on a forged document where date of birth of accused was shown as 26.4.1988. Father of the applicant has deposed about his

son studying in only one school and on basis of that record his date was mentioned in matriculation certificate. Thus, the matriculation certificate has to be given more credence and accordingly accused is entitled to be considered as Juvenile.

18. Thus, on the date of occurrence appellant / accused was juvenile and accordingly he had right to be heard and inquired by Ld. Juvenile Justice Board. The conduct of trial and holding guilty and conviction by learned trial court is liable to be set aside. Accordingly the conviction and sentence is set aside for the aforesaid reasons. Juvenile/ appellant shall be heard by Ld. Juvenile Justice Board, Palwal as per Sub Section (2) of Section 7A of Juvenile Justice (Care of Protection of Children) Act, 2000, and he is directed to appear with counsel before the Ld. Principal Magistrate, Juvenile Justice Board, Palwal on 6.9.2016. Trial court record along with copy of this order be sent to the Ld. Principal Magistrate, Juvenile Justice Board, Palwal.

The appeal filed by the complainant was also disposed of separately by the same Judge inasmuch as it was dismissed as infructuous in view of the fact that in appeal preferred by accused, the question of juvenility had been determined in favour of the accused.

The complainant/revisionist has challenged the said judgments by way of filing separate revision petitions.

Notice of the revision petitions was given to the State of Haryana and respondent/accused, who put in appearance through counsel.

I have heard learned counsel for the parties besides going

through the record and I find that the approach of learned Additional Sessions Judge, Palwal in deciding the question of juvenility of the accused has not been proper.

Learned Additional Sessions Judge, Palwal has heavily relied upon statement of father of accused as AW1. His testimony is required to be evaluated and analyzed very carefully and cautiously since he is A highly interested witness, who could be expected to depose falsely even to save his son from punishment.

With regard to the Middle Examination Certificate of the accused, it has simply been exhibited in statement of AW1 Dharam Singh. School certificate is not such a document, which is per se admissible. It is required to be proved by summoning relevant record by official of the Board of School Education, Haryana, which had issued the same. There could be every possibility of mischief of a wrong date of birth being mentioned in the certificate and forgery and fabrication thereof. Only from the original record, the authenticity and genuineness of such certificate could be established. Learned Additional Sessions Judge, Palwal clearly fell in error in relying upon a document, which had not been proved in accordance with law and truthfulness and genuineness of which was not established on record. The accused could have been asked to undergo ossification test by a competent doctor or Board of doctors to assess his age but it was not resorted to.

Learned counsel for the petitioner had raised a valid point that accused had obtained a driving licence issued to him by competent authority of Fatehgarh – Farrukhabad on 27.12.2006, wherein his date of

birth is mentioned to be 26.4.1988, which is commensurate with the fact that a person can obtain driving licence on attaining age of 18 years. However, his date of birth given in his Middle Examination Certificate is 16.8.1995, which means that on the date of issuance of driving licence, he was aged 11 years only, which could not possibly be there.

There is nothing on record to show that the accused had raised any plea of being a juvenile before the trial Court at any stage, rather his age as mentioned in the judgment is 25 years. All these facts should have been taken into consideration before declaring the accused as a juvenile instead of drawing that inference adopting a very casual, cursory and non-judicious approach, not keeping in mind the fact that an important issue was being dealt with. It seems that learned Additional Sessions Judge, Palwal has not considered the fact that the accused may escape punishment taking wrong plea of being a juvenile.

It may be observed here that if in fact it is established on record from cogent and convincing evidence brought on file by the accused that he was aged less than 18 years at the time of accident then of course he is to be declared a juvenile and dealt with accordingly but the accused may not be allowed to project himself as a juvenile to escape punishment when he is actually not.

Therefore, the judgments passed by the Additional Sessions Judge, Palwal are not sustainable. The same are set aside and the case is remanded to Additional Sessions Judge, Palwal for afresh decision in accordance with law. The parties through their counsel are directed to appear before Additional Sessions Judge, Palwal on 31.3.2020.

Both the revision petitions stand disposed of accordingly.

Necessary intimation be sent to the quarter concerned.

12.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No