

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-2851-2013

Judgement reserved on : 11.05.2022

Date of Decision: 02.06.2022

State of Haryana

--Petitioner

Versus

Virender Singh @ Golu

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

This petition is pending since long and nobody has appeared for the respondent. Therefore, the same is being decided on merits.

The State of Haryana has filed the present revision petition impugning the order dated 26.3.2013 whereby the respondent-accused has been declared Juvenile.

As per facts of the case, the respondent-accused was prosecuted in case FIR No.342 dated 28.12.2011 registered under sections 376, 365, 452, 366-A IPC at Police Station, Pehowa. During the pendency of the case he filed an application dated 29.9.2012 for declaring him a Juvenile. It was claimed that his date of birth was 2.4.1994 as per birth certificate issued by the Registrar, Births and Deaths, Kurukshetra and his age was 17 years 4 months. However, vide order dated 11.2.2012 learned SDM, Pehowa directed the prosecution/Superintendent of District Jail, Kurukshetra to get the ossification test conducted of accused Virender Singh to determine his age. The same was got conducted on 13.2.2021 at LNJP Hospital, Kurukshetra. As per report of the Radiologist dated 13.2.2011 the age of accused was determined to be 17 yeas. It was contended by the accused that

in the certificate issued on 18.4.2011 the name of the parents of the accused was not found mentioned. He contended that the certificate relied upon by the prosecution wherein the date of birth was mentioned as 25.10.1993 belonged to the elder brother of Virender Singh @ Golu, who died after his birth. In the reply filed to the application by the respondent-State it was contended that the birth certificate issued by the Registrar, Births and Deaths depicted his date of birth as 25.10.1993. It was further contended that the accused submitted the file for preparation of his passport in the office of Regional Transport Officer, Chandigarh and the date of birth shown in the passport was 25.10.1993.

During the course of the trial the applicant-accused examined his mother Jaswinder Kaur as CW-1, Jai Bhagwan, S.A as CW-2, Dr. Lajja Ram as CW-3, Jagir Singh as CW-4 and Prashant Kumar Bhandari LDC as CW-5. Besides this the documentary evidence was also produced. On the other hand, the prosecution examined oral as well as documentary evidence. After hearing both the sides learned Addl. Sessions Judge, Kurukshetra allowed the application filed by the applicant-accused and accepted his date of birth as 2.10.1994 and thus he was found to be juvenile on the date of occurrence i.e. on 27/28.12.2011. The petitioner-State of Haryana aggrieved by the impugned order dated 26.3.2013 passed by learned Addl. Sessions Judge, Kurukshetra has filed the present revision petition.

Learned State counsel has contended that the prosecution has duly inquired the date of birth of the respondent-accused and the certificate issued by the Registrar, Births and Deaths, wherein the date of birth of the respondent-accused was found to be 25.10.1993. The respondent also applied for issuance of a passport wherein again his date of birth was found

to be 25.10.1993. Learned State counsel submits that the learned Addl. Sessions Judge, Kurukshetra has failed to appreciate the same and wrongly relied upon the ossification test conducted of the respondent-accused. He submits that once the certificate has been issued by the Registrar, Births and Deaths the report of the ossification test could not have been relied upon. He submits that in view of the provisions of Juvenile Justice Act the certificate issued by the Registrar, Births and Deaths was to be taken into consideration and thus the ossification test had no legal sanctity.

I have heard learned State counsel at length and have gone through the record carefully.

The controversy raised in the petition is regarding the date of birth of the accused-respondent. There are two date of births i.e. one in the year 1993 and another in the year 1994. Both the parties had produced their respective evidence before the court of learned Addl. Sessions Judge, Kurukshetra. During the course of trial it was found that the prosecution did not even put a suggestion during the cross-examination of CW-1 Jaswinder Kaur that her son, who took birth on 25.10.1993 had died or not and it was not the respondent-accused who took birth on 25.10.1993. CW-2 Jai Bhagwan had proved Ex. C-1 showing the date of birth of the respondent Virender as 2.10.1994. PW-1 SI Phool Singh had admitted that he had orally verified about the Ex. D-1 from Municipal Council, Kurukshetra. He did not verify anything about the son who died within 10 days of his birth. There was no inquiry even regarding the fact of date of birth entered in the passport as 25.10.1993. Besides this, the report of the Radiologist opining the age of the respondent-accused as 17 years further strengthens the stand taken by the respondent that he was less than

18 years of age on the date of occurrence.

In the facts and circumstances of the case and the evidence produced on record, this Court finds no infirmity in the conclusion arrived at by the learned Addl. Sessions Judge, Kurukshetra and thus upholds the view taken by virtue of the impugned order accepting the respondent-accused to be a juvenile. Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

02.06.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No