



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-635-DB-2004 (O&M)
Reserved on: 16.7.2024
Date of Decision: 26.7.2024

KamalAppellant

Versus

State of HaryanaRespondent

2. CRA-S-2184-SB-2003 (O&M)

Braham PalAppellant

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Keshav Pratap Singh, Advocate
Amicus Curiae for the appellant (in CRA-D-635-DB-2004).

Mr. Manjeet Singh, Advocate
for the appellant (in CRA-S-2184-SB-2003).

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence both are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 7.11.2003, upon case bearing No. 165 of 22.1.2003/18.1.2002, by the learned Additional Sessions Judge (Adhoc), Faridabad, wherethrough in respect of charges respectively drawn against the accused-appellants qua offences punishable under Sections 302/34, 307 read with Section 34 and Section 392 IPC, thus the



learned trial Judge concerned, proceeded to record a finding of conviction against the appellants-convicts. However, accused-appellant Braham Pal was acquitted of the charges drawn against him qua offences under Sections 302 and 307 read with Section 34 IPC.

3. Moreover, through a separate sentencing order dated 11.11.2003, the learned trial Judge concerned, sentenced convict-appellant Kamal to undergo imprisonment for life for an offence punishable under Section 302 read with Section 34 IPC, besides also imposed upon the convict-appellant Kamal sentence of fine, as comprised in the sum of Rs. 5,000/-, besides in default of payment of fine amount, he sentenced the said appellant to undergo rigorous imprisonment for a period of one year. The learned convicting Court concerned, also sentenced convict-appellant Kamal to undergo rigorous imprisonment for two years for an offence punishable under Section 324 read with Section 34 IPC. The learned convicting Court concerned, further sentenced convict-appellant Kamal to undergo rigorous imprisonment for seven years for an offence punishable under Section 392 IPC, besides also imposed, upon the said convict-appellant sentence of fine, as comprised in a sum of Rs. 2000/-, besides in default of payment of fine amount, it sentenced convict-appellant Kamal to undergo rigorous imprisonment for a period of six months.

4. The learned convicting Court concerned, also sentenced convict-appellant Braham Pal to undergo rigorous imprisonment for three years for an offence punishable under Section 412 IPC, besides also imposed, upon the said convict-appellant sentence of fine, as comprised in a sum of Rs. 10,000/-, besides in default of payment of fine amount, it sentenced convict-appellant Braham Pal to undergo rigorous imprisonment



for a period of one year.

5. All the above imposed sentences of imprisonment upon convict-appellant Kamal, were ordered to run concurrently but the period of detention undergone by the appellants-convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

6. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeals, before this Court.

Factual Background

7. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PA/1 is assigned. As per the prosecution case, 18.9.99. ASI Balbir Singh alongwith constables Raj Kumar and Pawan Kumar was on patrolling duty in PCR No.11 and vehicle bearing registration No. HR-51-C-3300 in village Baghola. constable Jaswant Singh was the driver on vehicle. Arun Kumar, Babu Ram and Daya Chand met them and that said informed one boy after having sustained multiple injuries is lying near "Sanskrit Vidhyapeeth". On this information, the said police party reached at the spot and found that one boy was lying on the road side and another boy having sustained multiple injuries was lying in the nearby fields. Both the injured were removed to General Hospital. Palwal, one for treatment by the police party. On reaching the hospital, one of the boy had succumbed to his injuries. The condition of other boy was serious. The aforesaid occurrence was reported by ASI Balbir Singh by making a



statement to ASI Ashok Kumar, police post Village Gaddpuri and on that basis, formal FIR under sections 302/307 Indian Penal Code was registered with Police Station Sadar, Palwal.

Investigation proceedings

8. During the course of investigations, both the accused were nabbed. Accused Braham Pal was wearing shirt which had blood stains. The shirt was removed, enclosed in the sealed cloth parcel and was taken into possession. There were blood stains on the shoe which accused Kamal was wearing and also on his T-shirt and said articles were also removed, sealed into cloth parcels and taken into possession and both the accused were arrested. Dumper was also seized. Both the accused identified the place of occurrence on 19.9.99. The Dumper was sent to police station and the case property was deposited with seals intact with the M.H.C. Accused were interrogated on 24.9.99 in presence of Krishan Pal and Jagat PWs. The accused suffered disclosure statements and got the knives recovered. Rough sketches of the knives were prepared and they were taken into police possession. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

9. Since the offences under Sections 302, 307 and 412 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 4.1.2000, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for



trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused-appellants for the offences punishable under Sections 302/34 IPC, 307 read with Section 34 IPC and Section 392 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

12. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication.

13. As above stated, the learned trial Judge concerned, proceeded to convict both the accused-appellants for the charge(s) (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon both the accused-appellants.

Submissions of the learned counsels for the appellants

14. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

15. Furthermore, the learned counsel for the appellants have vociferously argued before this Court, that since the injured witness to the occurrence one Mubin resiled from his previously made statement in



writing, therebys they argued that the verdict of conviction is liable to be reversed by this Court. The further argument raised before this Court by the learned counsels for the appellants, is that, since the injured witness PW-9 resiled from his previously made statement in writing, rather was unknown to the accused-appellants, therebys even if he had identified the accused in Court, yet even the said identification in Court, thus does not carry any probative sanctity, unless in the prior thereto validly conducted test identification parade, he recognized, and, identified the accused, to be the incriminatory participants in the relevant crime event.

Submissions of the learned State counsel

16. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeals, as preferred by the convicts be dismissed.

Reasons for dismissing the instant appeals

17. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsels for the appellants rather are unworthy of acceptance, and, thereby they are rejected. Consequently, finding no merit in both the appeals, the same are hereby dismissed, and, the verdict of conviction, and, consequent thereto sentence of imprisonment, and of fine, as imposed upon the convicts-appellants are maintained, and, affirmed.

18. Be that as it may, the learned Amicus Curiae (in CRA-D-635-DB-2004) submits, that since the order made by this Court on 14.9.2004,



order whereof becomes extracted hereafter, thus resulted in the Juvenile Justice Board, Gurgaon making a report on 10.12.2004, hence with revelations therein, that at the time of commission of offence, the convict Kamal was a juvenile. Resultantly, he argues, that the trial, as became entered into against the said juvenile, rather was a jurisdictionally incompetent trial. He has further argued, that the verdict of conviction, and, consequent thereto sentences of imprisonment (supra), as became imposed upon convict-appellant Kamal, thus require theirs being quashed, and, set aside. Consequently, he contends that after quashing of the impugned verdict of conviction, and, the consequent thereto sentences as became imposed upon appellant Kamal, a direction be passed by this Court to the Juvenile Justice Board concerned, (hereinafter referred to as the “JJB”) to enter upon a trial in respect of the offences embodied in FIR (supra).

“x x x x

It has been pointed out by Mr. Raj Mohan Singh that the date of birth of the appellant Kamal was 1.5.1985 and he was accordingly a juvenile on the date of the commission of the offence, which was 18.9.1999. He concedes that this plea had not been raised at the time of the trial, but places reliance on Gopi Nath Ghosh v. State of West Bengal, AIR 1984 SC 237 which holds that notwithstanding the fact that the plea of the appellant being a juvenile has not been raised at the time of trial, it was still open to be raised at the stage of the appeal.

In this view of the matter, we direct the Juvenile Board to examine the matter and to submit its report as to the age of the appellant as on 18.9.1999, within three months from today. The matter be put up after the receipt of the report. Dasti.”

19. However, for the reasons to be assigned hereafter, the above arguments are rejected. The submission of the learned Amicus Curiae, that



since co-convict Kamal was a juvenile at the time of commission of the offence, thereby the verdict of conviction, and, consequent thereto sentence(s) of imprisonment (supra), as became imposed upon him, are vitiated, and, rather require their being quashed and set aside, thus is a misplaced submission, and, is rejected.

20. Though, prima facie, it is forthrightly stated in the said report, whereons dependance is made by the learned Amicus Curiae, that at the time of the commission of the offence, the appellant Kamal was below 16 years of age, thereupon, at the relevant stage, he was a juvenile. Moreover, when no adequate rebuttal evidence thereto became adduced by the learned Public Prosecutor concerned, thereupon the said made conclusion in the apposite report is to deemed to be acquiring a clinching effect. Resultantly thereby, prima facie the trial as became entered, upon, him by the learned trial Judge concerned, rather was a defectively entered upon trial, especially when the inquiry/trial against the juvenile was required to be entered respectively either by the Juvenile Justice Board concerned, or by the Children's Court concerned.

21. Be that as it may, it has to be determined whether the arguments (supra), as raised before this Court by the learned Amicus Curiae, that in the wake of the appellant, thus at the relevant time, being a juvenile, thereby the verdict of conviction, and, consequent thereto sentence as became imposed upon him, is liable to be quashed, and, set aside, thus on the ground that the same is vitiated, rather does not appeal to the judicial conscience of this Court.

22. The reason for making the above conclusion becomes founded



upon paragraphs 18 & 20, as become borne in a verdict rendered by the Hon'ble Apex Court in case titled as "**Karan @ Fatiya V. The State of Madhya Pradesh**", to which Criminal Appeal Nos.572-573 of 2019, is assigned, the said paragraphs become extracted hereinafter.

"18. Having considered the facts of the case and the findings recorded above, it would also be appropriate to briefly deal with the case law on the point as to whether once an accused after conviction at the stage of appeal is held to be a juvenile/child under the provisions of the 2015 Act, what would be the status of the trial, the conviction and sentence recorded by the Trial Court and the appellate Courts. Whether the trial itself would stand vitiated for lack of jurisdiction by the regular Sessions Court and it would be the JJB alone which could make an inquiry into the offence committed based upon the evidence led by the prosecution. If the inquiry has not been conducted by the JJB, then whether the entire proceedings need to be quashed or only the sentencing aspect would require consideration in accordance with the 2015 Act.

19...

20. There are a series of judgments on the said issue. Some have set aside the conviction, sentence and have terminated the proceedings, others have upheld the conviction but on the basis of sentence already undergone being more than the maximum permissible under the Juvenile Justice (Care and Protection of Children) Act, 2000 "2000 Act" have directed for release of the accused and third, where after maintaining the conviction, this Court has referred the matter to the JJB for passing appropriate orders on sentence. All the judgments delivered earlier which are briefly discussed hereunder relate to the 2000 Act. Present case falls under the 2015 Act as the offence itself is of the year 2017."

23. A reading of the above extracted paragraphs reveals, that the Hon'ble Apex Court therein took to consider whether in the wake of the juvenile/child becoming inaptly tried by the Criminal Court of competent jurisdiction constituted under the Cr.P.C., despite his/her being then not



triable by the said Court whether thereby the said trial is to be declared to stand vitiated thus for lack of jurisdictional competence, and, subsequently whether the Courts can after quashing the verdict of conviction and consequent thereto sentence, proceed to remand the matter to the JJB concerned/Children's Court, for the said JJB concerned/Children's Court, making a re-trial of the offence carried in the relevant FIR.

24. Furthermore, the further issue which fell for consideration, was whether the entire proceedings is required to be quashed, and/or only the sentencing aspect thus requires re-consideration, rather in accordance with The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "the Act of 2015"). The Hon'ble Apex Court after considering a series of judgments on the said issue, more specifically the judgment rendered by the Hon'ble Apex Court in case titled as "**Jitendra Singh alias Babboo Singh V. State of Uttar Pradesh**" reported in **2013 (11) SCC 193**, wherein, in paragraph Nos.28 to 30, paragraphs whereof becomes extracted hereinafter, thus echoings occur, that if the juvenile is found guilty of committing the alleged offence, thereupon he cannot go unpunished, but it was also declared therein, that the punishment to be awarded to the juvenile rather is required to be left to be imposed by the JJB concerned, as constituted under the The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act of 2000").

"28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him



by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

29. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This reads as follows:

“20. Special provision in respect of pending cases.—
Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. - In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

30. It is clear that the case of the juvenile has to be examined on



merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena (2012) 9 SCC 750, should be followed.”

25. In **Karan’s case (supra)**, the Hon’ble Apex Court considering the view (supra), propounded in **Jitendra Singh’s case (supra)**, thus in paragraph 30 thereof, which becomes extracted hereinabove, thus was made when the Juvenile Justice Act, 1986 (for short ‘the Act of 1986) or the Act of 2000 were in force. However, it was stated, that when the offence committed by the juvenile in the said case, was committed when the Act of 2015 came into force, which however is not the situation in the instant case, as at the time of commission of the alleged offences, the Act of 2000 was in force, yet the Apex Court proceeded to consider Section 9, as carried in the Act of 2015 on the ground that the said Act was in force at the time of the claimed remand, being made in respect of the relevant offence. Therefore, when at the instant stage, the claimed remand is made when the Act of 2015 was in force. Resultantly, with the Hon’ble Apex Court in paragraph 30 of **Karan’s case (supra)**, ultimately concluding, that since sub-section (3) of Section 9 of the Act of 2015, does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be juvenile or a child, would also lose its effect, rather therein it was declared that it is only the sentence if any passed by the Court would be deemed to have no effect. Therefore, but obviously the above declarations made in **Karan’s case**



(**supra**), were applicable to the espoused remand.

30. The above judgments relate to an offence covered by either the Juvenile Justice Act, 1986 “the 1986 Act” or the 2000 Act. We now proceed to briefly discuss the provisions under the 2015 Act. Section 9 of the 2015 Act is already reproduced in the earlier part of this judgment. According to sub-section (3) of section 9 of the 2015 Act, the Court which finds that the person who committed the offence was a child on the date of commission of such offence would forward the child to the JJB for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect. This does not specifically or even impliedly provide that the conviction recorded by any Court with respect to a person who has subsequently after the disposal of the case found to be juvenile or a child, would also lose its effect rather it is only the sentence if any passed by the Court would be deemed to have no effect.

26. Furthermore, the additional reason for the Hon’ble Apex Court in **Karan’s case (supra)**, refraining from quashing the conviction delivered to a child or a juvenile by a Court other than the JJB concerned, or the Children’s Court constituted under the Act of 2015, became founded, upon the expostulations made in paragraph 32 of **Karan’s case (supra)**, paragraph whereof becomes extracted hereinafter.

32. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court would have been completely excluded not only under section 9 of the 2015 Act but also under section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, under section 25 of the 2015 Act, it is clearly provided that any proceeding pending before any Board or Court on the date of commencement of the 2015 Act shall be continued in that Board or



Court as if this Act had not been enacted. Section 25 is reproduced hereunder:

*“25. **Special provision in respect of pending cases.** - Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted.”*

27. A reading of the said paragraphs discloses, that if the legislature intended that the conviction delivered upon a juvenile or a child was to be also made ineffective, then either the jurisdiction of the regular Session Court would have been completely excluded, thus not only under Section 9 of the Act of 2015, but also in Section 25 of the Act of 2015, provisions would have been made, that on a finding being recorded that the person being tried is a child, whereas, with Section 25, as borne in the Act of 2015, provisions whereof becomes extracted in the above paragraph, rather clearly providing, that any proceeding pending before any Board or Court on the date of commencement of the Act of 2015, shall be continued in that Board or Court as if this Act had not been enacted. However, the said provisions are not applicable to the instant case, as the criminal proceedings as drawn against the appellant concerned, thus before the learned trial Court concerned, but obviously stand terminated.

28. Consequently, in view of the above, the Hon’ble Apex Court in paragraph 33 of **Karan’s case (supra)**, paragraph whereof becomes extracted hereinafter, made a conclusion, that the verdict of conviction made upon a juvenile/child by a Court constituted under the Cr.P.C., would not become ineffective, but only the sentence awarded vis-a-vis him, thus in excess of what is permissible under the Act of 2015, or any other



correspondent thereto Act, rather is required to be accordingly modified. The reason for making the said conclusion becomes sparked from the factum, that the object under the Act of 2015, thus dealing with the rights and liberties of the juvenile, is only to ensure that the child/juvenile is brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the Act of 2015.

33. Having considered the statutory provisions laid down in section 9 of the 2015 Act and also section 7A of the 2000 Act which is identical to section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the accused who has committed a heinous offence and who did not claim juvenility before the Trial Court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the main stream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

29. Preponderantly also, when it has been declared in the said extracted paragraphs, that since the juvenile in conflict with law, did not at the earliest as in the instant case, produce any credible evidence, in respect of his well premising his claim for his being a juvenile, at the time of commission of offence. Resultantly, thereby it has also concluded, that the claim for quashing of the verdict of conviction delivered by the learned trial



Judge concerned, upon the juvenile concerned, is misfounded and is liable to be rejected.

30. Therefore, this Court for the reasons to be assigned hereinafter does not deem it fit, and, appropriate to negate the verdict of conviction nor this Court deems it fit, and, appropriate to, in terms of paragraph 33 as carried in **Karan’ case (supra)**, modify the sentence awarded upon appellant Kamal by the learned trial Judge concerned.

31. The reasons for drawing the above conclusion emanates from the provisions, carried in Section 21 of the Act of 2015, provisions whereof become extracted hereinafter, which but is the effective law in operation at the stage, when this Court considers the modification of the sentence of life imprisonment to such other sentence, as declared in the said Act.

“Section 21. Order that may not be passed against a child in conflict with law.

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.”

32. A reading of the said extracted provisions discloses, that imposition of capital punishment or life imprisonment, is not liable to become imposed upon the juvenile in conflict with law, for any offence under the provisions of the IPC or any other law for the time being in force. However, though the juvenile in conflict with law, is not amenable for becoming punished with capital punishment, but the substantive sentence of life imprisonment rather can be imposed upon the juvenile in conflict with law but with an order for release from the prison concerned being made, thus after lawful remissions becoming granted. Apart from the above provision,



which foster an empowerment in the Courts concerned, to impose a substantive sentence of imprisonment, upon the juvenile in conflict with law, but with a rider (supra), the provisions carried in Section 20 of the Act of 2015, provisions whereof stand extracted hereinafter, when make speakings, that when the juvenile in conflict with law, thus attains the age of 21 years, and, is yet to complete the term of stay, thereupon the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required for making an evaluation, that the said juvenile in conflict with law rather has undergone reformatory changes, and, if an affirmative report in that regard is made, thereupon, in terms of sub-Section (2) of Section 20 of the Act of 2015, the Children's Court may make a lawful decision to release the child on such conditions as it deems fit, or may decide, that the child shall complete the remainder of his term in a jail.

“20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.

(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Childrens Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section(4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

(i) decide to release the child on such conditions as it



deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;
(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.”

33. Though, the said empowerment is bestowed upon the Children’s Court, and, also when but evidently, the present juvenile in conflict with law rather did not in terms of Section 19 of the Act of 2015, which was in force, at the time, when the appellant was a juvenile in conflict with law, thus pass an order that the child in conflict with law is required to be tried as an adult in terms of the provisions, as engrafted in the Cr.P.C. Therefore, though the provisions of Section 20 of the Act of 2015, did per se become attracted against the present appellant-Kamal, but, only at the stage (supra), but obviously not at the present belated stage, when the appellant concerned, is but evidently an adult.

34. Be that as it may, yet the analogical effect thereof, vis-a-vis the case at hand, is that, since even after completion of 21 years at the Children’s Home, thus the juvenile in conflict with law, in terms of sub-Section (2) of Section 20 of the Act of 2015, rather can be directed to spend the remainder of his trial in the adult prison. Resultantly, when the juvenility of the appellant-Kamal rather has been pronounced much belatedly, thus at the stage, when at the time of making of the impugned verdict, upon him, he thus evidently became an adult. Therefore, the said belated espousal, to the considered mind of this Court, thus cannot purvey any benefit to the appellant concerned, to coax this Court, to pass any orders qua the remaining



sentence becoming spent at the Children's Home, so that subsequently in terms of sub-Section (2) of Section 15 of the Act of 2015, on failure of the appellant to reform his errant conduct, he can be directed to be sent to the adult prison.

35. Therefore, since the substantive sentence of life imprisonment became imposed upon the appellant concerned, thereupon it became well imposed, upon the appellant concerned.

Submissions of the learned counsels for the appellants

36. Now dealing with the submissions of the learned counsels for the appellants, whereby they submit that since the injured witness resiled from his previously made statement in writing to the police officer concerned, whereby when he did not support the charge drawn against the accused, resultantly, whereby there was no credible ocular account available on record in respect of the crime event, nor whereby the verdict of conviction, nor the consequent thereto sentences are sustainable, thus are submissions, which are required to be rejected.

37. The reason for forming the above conclusion is banked upon makings of wholesome analyses of the deposition, as became rendered by PW-9, before the learned trial Judge concerned. The said deposition is ad verbatim extracted hereinafter.

“About 7/8 months ago on 18th day of the month we were standing on the Chowk. I was accompanied by Subhash one of the accused whose name I do not remember came to me and asked for stonedust upon which I demanded Rs.700/- but he agreed for Rs.600/-. I accompanied him in our truck. On the way he stopped the truck near Hotel and after taking meal we again started for travel and on the way he gave beating to us. I have seen accused



Braham Pal who is present in the Court but he has not caused any injury to me and Subhash. He was not accompanying me and Subhash. (At this stage Ld. PP states that the witness is suppressing the truth and that he be declared hostile and permission to cross examine the witness be granted.) Heard. Request allowed.

XXXX by PP

I have heard statement Ex.PM. No such statement was ever made by me to the police. I received knife injury and driver also received knife injury. There were two persons one of them inflicted injuries to me and another inflicted injuries to deceased. Accused Kamal present in the court caused injuries to me. I have not stated to the police that accused Braham Pal caused injuries to me and accused Kalmal caused injuries to deceased Subhash (Confronted with Ex.PM wherein it is so recorded). It is incorrect that I am deposing falsely as having been won over by accused. Accused Kamal took away our dumper bearing registration number. HR-27/. However I do not remember the registration number. I do not know from where the dumper was got recovered but the same was handed over to us was by the police. It is incorrect that Braham accused caused injuries me, or that I am deposing falsely as having been won over by the accused.

XXXXXX by Sh.S.K.Dagar, Adv. Singh Adv for Braham and Sh. Surinder Singh Adv. for accused Kamal.

I was fully conscious when I reached the hospital. Police had reached the hospital in the night itself at about 9.30 P.M. I had told to the police regarding involvement of Kamal in the alleged occurrence. My owner also reached there. It is correct that Daya Nand, Bir Pal and Raj Pal, Kishan Lal, Jagat and Arun and Babu also reached there in the hospital. I had conversation with them and I had told all the facts to them. Kamal accused met me in the hospital. He was brought by the police. Kamal accused was being accompanied by some another person who was assailant. I have seen accused Braham Pal present in the court but he was not the assailant. It is incorrect to suggest that



accused Kamal was also not is involved in the alleged occurrence. It is incorrect that he has been named on the asking of police. It is incorrect deposing falsely qua Kamal accused.”

38. Though, the said witness who, while his stepping into the witness box as PW-9, thus in his examination-in-chief, resiled from his previously made statement to the police officer concerned, wherebys, though prima facie, he refused to lend succor to the genesis of the prosecution case, insofar as it appertains to convict-appellant Braham Pal. However, upon his being cross-examined by the learned Public Prosecutor concerned, thus on leave for the said purpose becoming accorded by the learned trial Judge concerned, thus in his cross-examination, he acquiesced to the factum, that he had received knife injury, and, that the driver of the vehicle concerned, also received a knife injury. Moreover, he did also, in his cross-examination, as became conducted by the learned Public Prosecutor concerned, thus acquiesce to the suggestion, that there were two persons, who had inflicted injuries upon him, and, upon the deceased concerned. Resultantly also, he had identified accused Kamal, who was then present in Court to be one of the assailants, who caused injuries upon him. Moreover, he also acquiesced to the suggestion, as became put to him by the learned Public Prosecutor concerned, that accused Kamal had driven away the dumper.

39. Bearing in mind the above statement made by PW-9 during the course of his becoming cross-examined by the learned Public Prosecutor concerned, besides bearing in mind the further cross-examination, as became conducted, upon him by the learned defence counsel, wherein too, he acquiesced to a suggestion, as became then meted to him by the defence



counsel, that he had revealed to the police regarding the involvement of convict Kamal in the alleged occurrence. Moreover, bearing in mind the further fact, that he also acquiesced to a further suggestion that when Daya Nand, Bir Pal, Raj Pal, Kishan Lal, Jagat, Arun and Babu rather reached the hospital, qua his then revealing to them the entire facts relating to the crime occurrence. Therefore, thus the following inferences arise therefrom.

40. (i) Since the said witness identified accused Kamal in Court, and named the said accused to be the assailant, who caused injuries, upon him, therebys the said made statement in his cross-examination does underwhelm the making of an exculpatory statement by him in his examination-in-chief, wherebys he resiled from his previously made statement in writing, vis-a-vis the incriminatory role assigned to convict Braham Pal. Moreover, when in his cross-examination, as became conducted by the Public Prosecutor, he also acquiesced to a suggestion that accused Kamal drove away the dumper in question, thus from the crime site, therebys he did but acquiesce to the incriminatory participation of accused Kamal in the relevant crime event. Resultantly therebys, the exoneration of guilt, if any, viz-a-viz convict Kamal as made by PW-9 arising from his reneging from his previously made statement in writing to the police, wherein, he rather had assigned an incriminatory role to accused Kamal, thus becomes completely underwhelmed.

41. (ii) Moreover, therebys there was no reason for any test identification parade becoming conducted but prior to the identification, as made in Court of convict Kamal, despite the fact that he had identified the convicts (supra) in Court, as no cross-examination became made upon the said witness by the learned defence counsel, to the effect, that prior to the



crime event, he was unaware about the identity of either convict Braham Pal or of convict Kamal.

42. (iii) Be that as it may, since PW-9, in his examination-in-chief, rather exculpated not only the incrimination drawn qua convict Braham Pal, but also he exculpated his guilt during the course of his being cross-examined by the learned Public Prosecutor concerned, thereby it has to be gauged whether as such the verdict of conviction, as became rendered viz-a-viz convict Braham Pal, is required to be interfered with.

43. (iv) For determining the above said fact, it is necessary to bear in mind that during the course of cross-examination, being made upon PW-9, by the learned defence counsel, he had made an acquiesced to suggestion to him, that when Kishan Lal and others, thus arrived at the hospital concerned, to meet him, qua then his revealing to them all the facts relating to the occurrence. Resultantly, the effect of the said acquiescence, is that, an apposite intimation in the hospital was made by PW-9 to the said Kishan Lal and others. However, a reading of the deposition occurring in the cross-examination of the said Krishan Lal (PW-12), the owner of the dumper (supra), which became hired by both the accused, thus discloses that, in his cross-examination, rather he admitted that he met the police at about 7/8 A.M., and, that he had then intimated them qua accused Braham Pal and Kamal rather driving away his dumper (supra). He also in his cross-examination admitted a suggestion, that when he had visited the hospital to see Mubin, he found that he was conscious and speaking. Therefore, the above echoings made by PW-12 Krishan Lal, upon cross-examinations becoming made upon him, by the learned defence counsel, do have the following telling effects.



44. (a) That therebys, the echoing made by PW-9 in his cross-examination, as became conducted upon him by the learned defence counsel, that he had revealed the entire incident to Krishan Lal, does acquire some tenacity. Therefore, since the deposition of PW-12 Krishan Lal became recorded subsequent to the recording of the deposition of PW-9, thereupon, the learned defence counsel was required to be eliciting from PW-12 Krishan Lal, thus during the course of his making cross-examination, upon him, qua whether injured Mubin, who was stated by PW-12 to be conscious and speaking, did or did not reveal to him the entire incident, as became unfolded to him by Mubin, especially when the latter did acquiesce to the apposite suggestion, as made to him by the learned defence counsel, during the course of makings of cross-examination, upon him, that he had revealed the entire incident to PW-12.

45. (b) Moreover, the learned defence counsel was also required to be then eliciting, from the said Krishan Lal, the imperative fact, that PW-9 Mubin, had disclosed to him only the incriminatory participation of only accused Kamal, and, had not revealed to him qua the incriminatory participation of co-convict Braham Pal. However, the said suggestions never became purveyed to PW-12 Krishan Lal, nor any exculpatory answers became meted theretos, whereas, both the purveying of the said suggestions to PW-12 Krishan Lal, besides elicitation of incriminatory answers thereto rather was imperative, thus for negating the worth of the speakings, as made by PW-9, rather in his cross-examination (supra), as conducted by the defence counsel, wherein, he stated that he had unfolded the entire incident to PW-12 Krishan Lal. Resultantly, therefrom it has to be concluded that PW-9 had revealed the incriminatory participation of both the convicts in the



crime event, irrespective of the fact, that in his examination-in-chief, and, also in his cross-examination conducted by the learned Public Prosecutor, rather he had completely exonerated the incriminatory participation of co-convict Braham Pal in the relevant crime event, but had assigned an incriminatory role therein qua convict Kamal.

46. Now it has also to be determined whether the deposition of the witnesses (supra) acquire some tenacity or become overwhelmed by the respectively made efficacious or tainted recoveries of weapons of offence, in pursuance to the respectively made signed disclosure statements.

Signed disclosure statements of convict-appellant Braham Pal and Kamal respectively Ex. PV and Ex. PV/1

47. During the course of investigations, being made into the appeal FIR, convicts-appellant Braham Pal and Kamal, thus made their respective signed disclosure statements, to which respectively Ex. PV and Ex. PV/1 become assigned. The signed disclosure statements, as made by both the accused are ad verbatim extracted hereinafter.

Disclosure Statement of convict-appellant Braham Pal

“x x x x
On 18.9.99 I along with Kamal hired Dumper No. HR-38-A-8039 from village Pali. When we reached ahead village Baghola towards Palwal stopped the dumper from driver then we inflicted injuries with knife to driver Subhash and cleaner Mubin. Their names were known later on. I had thrown that knife on the left side of the road ahead from the place of occurrence towards Palwal in the bushes. After demarcation I can got it recovered.

x x x x”



Disclosure Statement of convict-appellant Kamal

“x x x x

On 18.9.99 I along with Braham Pal hired Dumper No. HR-38-A-8039 from village Pali. When we reached ahead village Baghola towards Palwal had stopped the dumper from driver and inflicted injuries with knife to driver Subhash and cleaner Mubin of Dumper No. HR-38-A-8039. Their names were known later on. I had thrown that knife ahead from the place of occurrence towards Palwal near the bridge in the bushes. After demarcation I can got it recovered.”

x x x x”

48. Pursuant to the above made signed disclosure statements, convicts Braham Pal and Kamal ensured the recovery(ies) of knives, which were taken into police possession, through recovery memos, to which respectively Ex. PQ and Ex. PO become assigned.

49. The disclosure statements (supra), carrying the signatures, in Hindi, of both the convicts-appellants. In their signed disclosure statements (supra), both the convicts-appellants (supra), confessed their guilt in committing the crime event, by inflicting injuries on the deceased concerned, hence with the incriminatory weapons of offence. The further speaking therein is qua theirs keeping, and, concealing the incriminatory weapons of offence, at the place concerned, and, qua theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons of offence to the investigating officer concerned, thus from the place of their hiding, and, keeping the same.



50. The above disclosure statements, do acquire, the utmost evidentiary solemnity, as thereons exist the signatures, in Hindi, of the convicts-appellants, which, however, they have neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald nor a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through proven recovery memo(s), the convicts-appellants, thus caused the recovery(ies) of the incriminatory weapons of offence, to the investigating officer concerned.

51. Since the recovery(ies) of the incriminatory weapons of offence, as made through recovery memos Ex. PQ and Ex. PO, has/have not been proven to be false or a contrived recovery(ies), inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery(ies) rather was/were open place(s), hence leaving scope for any person, other than the convicts to place it there. Thus, the above recovery(ies) is/are not only to be concluded to be a validly made recovery(ies), but is/are also to be concluded to be of the very same incriminatory weapons, which did become used by convicts-appellants, in causing the relevant fatal assault.

MLR of injured witness Mubin Ex.PM

52. Dr. A.K.Nagpal, who medico legally examined the injured witness Mubin, has stepped into the witness box as PW-11, and, during the



course of his examination-in-chief, he has proven the MLR of injured witness Mubin, to which Ex. PM, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Mubin.

“1. Lacerated wound 5x1 cm linear with irregular edges and fresh local building on the left side of chin of oblique direction and injury was kept under observation and was advised X-ray mendible. It was caused by blunt weapon within duration of 6 hours.

2. Incised wound 2cm x 1 m linear with clean edges and profused fresh bleeding. It was at the left lateral end of mouth and of oblique direction.

Injury was simple in nature caused by sharp edged weapon within duration of 6 hours.

3. Incised wound 2cmx1cm linear with clean edges and profused local bleeding. It was on right side of neck and of verticle direction. It was kept under observation for 24 hours in view of area involved. It was caused by sharp edged weapon within three 6 hours.”

53. The said witness has opined that injury No. 1 was caused by blunt weapon, whereas injuries No. 2 and 3 were caused by a sharp edged weapon. Therefore, the said proven MLR drawn qua injured Mubin corroborates the genesis of the prosecution case, besides also assigns a firm fortification to the above inference made by this Court, after this Court minutely analyzing the deposition of PW-9 Mubin and of PW-12 Krishan Lal.

Post-mortem report

54. The post-mortem report, to which Ex. PI is assigned, became proven by PW-6. PW-6 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Subhash, thus his noticing



thereons the hereinafter ante mortem injuries-

- “1. Incised wound 2.0 x 0.75 cm on the right side of the abdomen placed obliquely. In continuation there was a linear abrasion measuring 3 cm on the upper part. Depth of this wound was 2.5 cms. Clotted blood was present.*
- 2. Incised wound 2.2 x 1.0 x 2.5 cms on the right side of abdomen laterally near injury No. 1 with clotted blood.*
- 3. Incised wound 2.2 x 1.0 cm on the right side of the abdomen transversely placed below injury No. 2. Its depth was 6.5 cm going upward and horizontally.*
- 4. Incised wound 2.2 x 1.0 x 2.0 cms on the right side of the chest with clotted blood.*
- 5. Incised wound 2.5 x 1.0 x 1.0 cm on the right side of the chest laterally near injury No. 4.*
- 6. Incised wound 2.0 x 1.0 cm on the right side of the chest laterally to injury No. 5 with a depth of 2.5 cms.*
- 7. Incised wound 2.5 x 0.75 cm on the right side of the base of the neck with a depth of 1.5 cm.*
- 8. Incised wound over the right side of the base of the neck adjacent to injury No. 7 measuring 2.0 x 1.0 x 1.0 cm.*
- 9. Incised wound 1.5 x 0.75 x 1.0 cm on the left side of the base of the neck.*
- 10. Incised wound 1.7 x 0.75 x 1.0 cm on the left side of the base of the neck.”*

55. Furthermore, PW-6 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to chest and abdominal injuries, which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

56. The above made echoings by PW-6, in his examination-in-chief, became never challenged through any efficacious cross-examination,



being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-6 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-6, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

57. Thus, a conjoint reading of the reports of the doctors concerned, who respectively proved the apposite MLR of the injured concerned, and, of the post-mortem report of the deceased concerned, does foster an inference, that the signed disclosure statements, as made by the convicts-appellants, and, also consequent thereto made recovery(ies) through recovery memos Ex. PQ and Ex. PO, do also become fully supported by the above medical account/evidence. In summa, this Court finds no gross perversity or absurdity in the appreciation of the relevant evidence, as became made by the learned trial Judge concerned.

Final order

58. The result of the above discussion, is that, this Court does not find any merit in both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the



filing of an appeal.

- 59. Records be sent down forthwith.
- 60. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 26th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No