



121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-552-2026 (O&M)

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
22.04.2026	07.05.2026	FULL PRONOUNCED	07.05.2026

RXXXXX ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. V.P. Sangwan, Advocate
for the appellant.

Mr. Karan Sharma, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
638	05.11.2022	City Bhiwani	294, 302, 506 r/w 34 IPC

Criminal Case Number in the Trial Court	SC/47/2023 CNR No. HRBH010024562023
Date of Decision	10/13.03.2026

Convict's name	Penal provision	Sentence
Rxxxxx	506 r/w 34 IPC	RI for 06 months with a fine of Rs. 200/-
	302 r/w 34 IPC	RI for 10 years with a fine of Rs. 5000/-

1. Challenging the above captioned judgment of conviction and sentence, the convict, who is a CCL, has come up before this Court by filing the present criminal appeal.

2. We have heard counsel for the appellant and State, and instead of admitting the matter for final hearing, we have noticed one fundamental defect which must be addressed at the initial stage itself, because if not cured at this stage, it would further delay proceedings, put the convict in a queue which would be later than that of today, and serve no purpose.

3. The fundamental defect that is noticeable is in the sentencing portion of the impugned judgment. As per the impugned judgment, the appellant was treated as a child but was tried as an Adult as mandated in §19 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter called the 'JJ Act') in the above captioned trial. The trial Court held the present appellant guilty of the commission of offenses punishable under §§506 and 302, read with §34 of the IPC.

4. The learned trial Judge heard the child on the quantum of sentence and vide a separate order dated March 13, 2026, sentenced the child under §506 r/w 34 IPC for RI for 06 months and a fine of Rs. 200/-, and in default of payment of fine, to undergo a simple imprisonment for one week. We are not stating anything regarding this portion of the sentence.

5. The problematic and illegal portion is the next sentence under §302, read with 34 IPC. The learned trial Judge imposed a sentence of RI for a period of 10 years and directed payment of a fine of Rs. 5000/-, and, in default of payment of the fine, the convict shall further undergo simple imprisonment for 03 months. On the face of it, this sentence is contrary to the basic statutory provision of §302 IPC, which provides for only two sentences, i.e., either life imprisonment or death. Nowhere is it mentioned that under §302 IPC, the sentence can be for 10 years.

6. It shall be relevant to extract the following provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter called the 'JJ Act'):

19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour

modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

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.

7. Section 19 of JJ Act explicitly points out that after receiving the preliminary assessment report from the Board under §15, the Children's Court may decide to try the child as an adult as per the provisions of CrPC, 1973/BNSS, 2023 and pass appropriate orders subject to the provisions of §§19 and 21 of JJ Act considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere, however §21 of JJ Act provides that no child in conflict with law shall be sentenced to death, or for life imprisonment without the possibility of release for any such offense either under the provisions of this Act or under the provisions of Indian Penal Code, 1860/ BNS, 2023 or any other law for the time being in force.

8. Thus, the crucial words in §21 are that a Child-in-Conflict with law is not to be sentenced to death or life imprisonment unless the possibility of release has been specified. The legislative intention is very clear that if somebody is given capital punishment, then there is no possibility of release, as such, on the face of it, a death sentence cannot be given. Regarding the second part of §21, when it talks about life imprisonment, without the possibility of release, what the legislature implies is that the life imprisonment normally runs through the entire life, where there may be circumstances of no possibility of release, still, such a harsh sentence cannot be imposed upon a Child-in-Conflict when tried as an adult. It would be sufficient when the Courts are trying a child as an adult and when they hold such a child guilty for murder or other offenses, where the only sentence prescribed is imprisonment for life or death, the only sentence the Courts can award is either life or death, then in such a situation, the life imprisonment shall not run to the end of natural life.

9. On the one hand, the Constitutional Courts can restrict the release of a convict who has been sentenced to life imprisonment, shall not be released unless such a prisoner has completed a minimum term of sentence, or even till the end of natural life. Even some

penal provisions mandate that the sentence run till the end of the natural life. To the contrary, while trying a child as an adult, the sentence cannot be till the end of natural life. However, given the mandate of §21 of JJ Act, 2015, it is obligatory for the concerned Courts to specify that there shall be no restriction on the possibility of release of such a convict depending upon the prisoner's conduct in jail and outside, whether released on parole, furlough, or on suspension of the sentence, but it is not permissible for any Court to give a child-in-conflict-with-law any other sentence except life imprisonment for the offence of section 302 IPC whose new avatar is §103(1) BNS, 2023.

10. In *Bharatkumar Rameshchandra Barot v. State of Gujarat* [2018] 3 SCR 689; 2018-INSC-263, Mar 26, 2018, the Hon'ble Supreme Court holds

[26]. Section 302 IPC, in clear terms, provides that "whoever commits murder shall be punished with "death" or "imprisonment for life" and shall also be liable to "fine".

[27]. Any punishment less than the life imprisonment, as prescribed under Section 302 IPC, if awarded by any Court is per se illegal and without authority of law. Indeed, there is no such discretion left with the Court in awarding the punishment except to award the punishment which is prescribed under Section 302 IPC as mentioned above.

11. In *State of Madhya Pradesh v. Nandu @ Nandua* [2022] 7 SCR 487; 2022-INSC-901, Sep 02, 2022, the Hon'ble Supreme Court holds

[pg489][A-B] The punishment for murder under Section 302 IPC shall be death or imprisonment for life and fine. Therefore, the minimum sentence provided for the offence punishable under Section 302 IPC would be imprisonment for life and fine. There cannot be any sentence/punishment less than imprisonment for life, if an accused is convicted for the offence punishable under Section 302 IPC. Any punishment less than the imprisonment for life for the offence punishable under Section 302 would be contrary to Section 302 IPC.

12. In *Karan @ Fatiya v. State of MP* [2023] 2 SCR 587; 2023-INSC-197, Mar 03, 2023, a three-Judge Bench of the Hon'ble Supreme Court holds,

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.

13. In *A v. State of Chhattisgarh*, CRA No. 1478 of 2022; 2025-CGHC-12886, Mar 18, 2025, Chhattisgarh High Court observed,

[36]. The learned trial Court has committed an error of law firstly, by convicting the appellant for the offence punishable under Section 302 of the IPC and, secondly, by sentencing him to undergo simple imprisonment for 10 years. If an accused is convicted for the offence under Section 302 of the IPC, the punishment that could be awarded is

either life imprisonment or death sentence with fine. There is no other punishment prescribed under Section 302 of the IPC. Furthermore, the said sentence could have only be awarded only with the possibility of release, and not otherwise, as has been provided under Section 21 of the Act of 2015.

14. Rajkumar v. State through Inspector of Police, CrI. A(MD)No.106 of 2021, Jan 06, 2023, a Division Bench of the Madurai Bench of the Madras High Court observed,

[17]. The plain reading of this Section clearly indicates that the bar is only to impose the life imprisonment without the possibility of release and it is not a complete or total bar for a Court to impose life imprisonment if there is possibility of release. If sentence of life is imposed with possibility of release either premature or on completion of 14 years of imprisonment, such imposition of sentence will not fall within the bar under Section 21 of the JJ Act, 2015.

15. Given the above, on the face of it, the learned trial Judge committed an error by giving a sentence of 10 years under Section 302 IPC by a total misreading of Sections 19 and 21 of the JJ Act.

16. At this stage, if this Court clarifies the order by imposing life imprisonment, then it would certainly cause prejudice to the accused because an accused has a right to argue on limitations against the State and the rights given to the accused under Section 21 of the JJ Act which says that no Child-in-Conflict with law shall be sentenced to death or imprisonment for life without the possibility of release of such a convict and to afford such a convict the possibility of release, the appropriate Court for that purpose would again be the Trial Court and the Higher Courts after upholding the conviction.

17. In the present case, we are not hearing the appeal, but we have noticed the illegality in sentencing at the admission stage itself. Given this, we have no option but to allow the appeal in part, set aside the portion of the sentence awarded under §302 IPC read with §34 of the IPC, and remand the matter to the trial Court to re-hear the appellant/convict on the sentence and pass a sentence in accordance with the law.

18. With the aforesaid observations, appeal is partly allowed to the extent mentioned above. All pending applications, if any, also stand disposed of.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

07.05.2026

Jyoti Sharma

Whether speaking/reasoned: Yes

Whether reportable: **YES**