

Court No. - 80

Case :- CRIMINAL REVISION No. - 2238 of 2023

Revisionist :- X- Juvenile

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Ganesh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the revisionist as well as learned A.G.A. for the State is present.

The present criminal revision has been preferred by the revisionist through his father with a prayer to allow this revision and set aside the judgment and order dated 06.09.2022 passed by learned Juvenile Court/learned Additional Sessions Judge/ Special Judge (POCSO Act), Sonbhadra in Criminal Appeal No. 33 of 2021 as well as order dated 06.09.2021 passed by Juvenile Justice Board, Sonbhadra. Further prayed to release the revisionist on bail in Case Crime No. 156 of 2013 under Sections 376, 506 I.P.C. and 3A/4 POCSO Act, Police Station Kon, District Sonbhadra.

Facts in brief are that case was registered against the revisionist as Crime No. 156 of 2013 under Section 376, 506 I.P.C. and 3A/4 POCSO Act with allegation that on 18.11.2013 at about 9 'o' clock in the night when the victim went out of her home for attending natural call and was returning back to her house, the revisionist was standing near to his old house. The victim being alone was taken away by the revisionist into his home. She made hue and cry but her mouth was shut by the revisionist. She was kept under threat by showing knife and he committed rape with her and left her at about 3:30 a.m. in the night with threat that she would not disclose the incident to anyone. When she came back to her house she narrated the story to her parents. The victim was aged about 13 at the time of alleged incident. The F.I.R. was lodged on 19.11.2013 at the police station by the father of the victim. After investigation charge sheet was filed against the revisionist under Section 376, 506 I.P.C. and 3A/4 POCSO Act. The revisionist being Juvenile faced inquiry before the learned J.J. Board.

During the course of inquiry statement of informant Suresh Paswan P.W. 2 the victim, P.W. 3 Geeta Devi (mother of the victim), P.W. 4 Ram Bharosh Paswan (uncle of the victim), P.W. 5 Dr. Geeta Jaiswal were examined. The statements of the revisionist were recorded before the learned Board and after giving an opportunity of hearing order was passed on 06.09.2021 by which he was held guilty and two years and four months sentence was awarded. Against this order an appeal was filed before the learned court of Sessions which was dismissed but the sentence was modified and he was ordered for sending to Special Home. Being aggrieved with the orders passed by the learned J.J. Board as well as

learned appellate court present criminal revision has been preferred.

It is submitted by learned counsel for the revisionist that in this case, the age of the revisionist was found to be more than 16 years but he was minor i.e. below the age of 18 and the victim was also aged about 13. There was no any evidence on record to show that rape was committed with the victim by the revisionist. Even in medical report nothing such was found to show that rape was committed with her. There is nothing except the statement of the victim before the learned Board. The statement of the victim does not get corroboration with any other material on record even though the Board held the revisionist guilty under Section 376 I.P.C. which cannot be said to be lawful and based on the material on record, therefore, requested to set aside the orders passed by the learned J.J. Board as well as learned appellate court.

Secondly, he submitted that he is languishing in Special Home from 06.09.2022 i.e. more than one year, therefore he be released after reducing the period of confinement in view of age of the revisionist and the report as filed by D.P.O. because there is no any criminal antecedent against the revisionist.Â

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case the victim was aged about 13 at the time of alleged incident. The revisionist was aged about 16 and committed rape with the victim by using force and under threat by showing knife to her. She was also confined in a home by the revisionist and rape was committed with her. This incident was narrated by the victim herself to her parents when she was released by the revisionist from his home, as a result present F.I.R. was lodged without any inordinate delay. The statements of father, mother and victim were recorded before the learned Board and Doctor was also examined. There was no any contradiction in the statements as made by the prosecution witnesses before the learned Board to make them unreliable. Since victim was subjected to rape, therefore her statement cannot be discarded only on the basis of lack of corroboration either with the medical report or any other evidence. The revisionist being above the age of 16 can also not be said that he was not knowing the nature or consequence of the act he committed with the victim. The period for which he was sent to Special Home by the learned Board cannot be said to be more and against the provisions of law, therefore, there appears no any illegality or impropriety in the orders passed by learned Board as well as learned appellate court but this criminal revision being devoid of merit is liable to be dismissed.

The perusal of record shows that the incident took place on 18.11.2013 in the night and F.I.R. was lodged on 19.11.2013 without making any unnecessary delay by the father of the victim against the revisionist. The incident was narrated by the victim to her parents when she came back to her house after being released by the revisionist. During inquiry the statement of P.W. 1 (father of the victim) was recorded who stated clearly about the incident as narrated to him by the victim. Likewise P.W. 3 (mother of the victim) has also deposed before the learned Board about the commission of incident with the victim by the revisionist as narrated to her by the victim. P.W. 4 (Uncle of the victim) was also examined who supported the incident. P.W. 2, the victim has also deposed

before the learned Board that the revisionist committed rape with her by taking her into his custody when she went out of her house to attend the natural call and was returning back to her house. She also stated about the use of threat with her by the revisionist. The statement of the victim was also recorded under Section 164 Cr.P.C. by the learned Magistrate in which she also narrated the whole incident. During cross-examination of the witnesses no any such thing was found to make the statements of the witnesses contradictory. The victim was also cross-examined but nothing such was found to make her statement unreliable and false. There was no any major contradiction in the testimony of witnesses of fact regarding commission of incident. The victim was medically examined on 20.11.2013 and after two days of the alleged incident in which no any sperm was found on her private part but on the basis of medical report that no any injury was found on the person of the victim on her private part, it cannot be concluded that incident was false and the statements of the victim and other witnesses were not reliable. It also appears that the revisionist took plea of enmity between both the parties regarding asking of money Rs. 50,000 /- by the father of the victim from the father of the revisionist who denied, as a result present case was registered falsely against him, does not get support from any material on record. The fact of enmity has never been admitted by either of the prosecution witnesses but all of them have stated clearly that there were amicable relations between both the families. It shows that there was no enmity between both the families and the plea of enmity cannot be said to be reliable.

In view of this Court, on the basis of material on record there appears no any illegality and impropriety in the finding as recorded by learned J.J. Board as well as by learned appellate court. The period of revisionist being sent to Special Home can also not be said to be more than provided under the Act in view of age of the revisionist being above 16. As a result, this criminal revision being devoid of merit is liable to be ***dismissed***.

This criminal revision is ***dismissed***.

Copy of this judgment along with original record of court below be transmitted to the court concerned.

Order Date :- 8.11.2023

Suraj Srivastav