

Court No. - 80

Case :- CRIMINAL REVISION No. - 2860 of 2021

Revisionist :- Mr. X

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Awadhesh Kumar Malviya, Ajay Srivastava, Shabana Nizam

Counsel for Opposite Party :- G.A., Om Prakash Singh

Hon'ble Subhash Chandra Sharma, J.

Heard Ms. Shabana Nizam alongwith Sri S.N. Singh learned counsels for the revisionist, learned counsel for the opposite party as well as learned A.G.A. for the State and perused the record.

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 09.08.2021 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Ghazipur in Criminal Appeal No. 45 of 2021 as well as order dated 25.06.2021 passed by Juvenile Justice Board, Ghazipur. Further prayed to release the revisionist on bail in Case Crime No. 48 of 2021 under Section 376-D I.P.C. and Section 3/4 of POCSO Act, Police Station Karanda, District Ghazipur.

It is submitted by learned counsel for the revisionist that in this case the delinquent was aged about 17 years at the time of alleged incident. It is further submitted that the victim was also aged about 17 and she was in affair with the present revisionist, that was the reason she went in a field from home where physical relations were established between both of them with her will. Later on when she was on the way from the place of occurrence to her home two other persons went there who were also said to have committed rape with her but there was no any connivance of this revisionist and other two co-accused persons those were named in the F.I.R. The statement of the victim was also recorded under Section 164 Cr.P.C. by the learned Magistrate in which she stated clearly that she was well appended with the revisionist prior to the alleged incident and she liked him. On his call on telephone she went to the field of Arhar at 6 in the evening and physical relations were established between both of them with her will. When she was coming back from there on the way two other persons moved to her who were her own relatives have also

committed rape with her. In this way, the victim was also willing and consensus with the revisionist and he was not in connivance with other two co-accused persons, therefore, his case is different from that of other co-accused persons. It is also submitted that during medical examination no any injury either external or internal was found on the person of the victim to suggest that gang rape was committed with her. Even during pathological examination no any sperm dead or alive was found it also negates the commission of rape with her. It is further submitted that there is nothing adverse against the interest of the delinquent in the report submitted by D.P.O.

It is further submitted that the provisions as contained u/s 12 of the Juvenile Justice Act had not been considered by the Juvenile Justice Board even the report submitted by Probation Officer was also not considered. The appellate court has also not considered all these facts but rejected the appeal without applying its judicial mind and considering the law as contained u/s 12 of the aforesaid Act. He is in Child Care Home since 01.03.2021 i.e. more than two years and his psychology is being affected adversely, therefore, requested to set aside orders passed by the J.J. Board as well as appellate court and allow the criminal revision.

Learned counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that during medical examination painful urination was complained by the victim before the doctor which shows that there was commission of rape with her by the present revisionist and other co-accused persons. It is also contended that co-accused persons also accompanied with the revisionist to the place of occurrence and after establishing the physical relations with the present revisionist they also committed rape with her and it was in the knowledge of the revisionist, therefore, he is not entitled for the benefit of bail.

Considering the facts and circumstances of the case, submission made by learned counsel for both the parties as well as learned A.G.A. for the State, perusal of record, the provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the Probation Officer, it appears that Juvenile Justice Board as well as the appellate court had not considered the relevant provisions and the material on record in well manner but passed the orders without applying their judicial mind. In this way, there appears ground in this revision and the orders passed by the Juvenile Justice Board as well as learned appellate court are liable to be set aside.

Accordingly, the orders passed by Juvenile Justice Board dated 25.06.2021 and the appellate court dated 09.08.2021 are, hereby, set aside and present criminal revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail on executing person bond by the revisionist (father of the delinquent) and two sureties each in the like amount to the satisfaction of the Juvenile Justice Board concerned on following conditions :-

(i) The revisionist/ father will furnish an undertaking that upon release on bail the revisionist will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence.

(ii) The revisionist/ father will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not be allowed to waste his time in unproductive and excessive recreational pursuits.

(iii) Juvenile and the revisionist/ father will report to the Probation Officer on the first Monday of every calendar month.

(iv) The Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board concerned on such a periodical basis as the Juvenile Justice Board may determine.

Order Date :- 16.10.2023

Suraj Srivastav