

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No. 3670 of 2013
Date of decision : 11.02.2015.

Gagandeep Singh

..... Petitioner.

versus

State of Punjab

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Mr. T.P.S.Makkar, Advocate for the petitioner.
Mr. Gurinder Jeet Singh, DAG, Punjab.

K.C.PURI, J.

Challenge in this revision is the judgment dated 03.09.2013 passed by Shri Sarbjit Singh Dhaliwal, learned Additional Sessions Judge, Sri Muktsar Sahib vide which the appeal preferred by juvenile-appellant against the judgment and order dated 25.1.2013 passed by Ms.Rana Kanwar Deep Kaur, PCS, Principal Magistrate, Juvenile Justice Board, Sri Muktsar Sahib convicting juvenile under Sections 376 and 366 of the Indian Penal Code (in short – the IPC) and sentenced to undergo Special Home for a period of three years under Section 376 of the IPC and two years for offence under Section 366 of the IPC and both the sentences were ordered to run concurrently.

2. Briefly stated, the prosecution story is that on 03.05.2012 at about 1.00p.m., complainant his wife and nephew were working in the grain market. His daughter prosecutrix aged 9 years was playing near them. They were busy in their work and then at about 3pm, his daughter prosecutrix came to them, while weeping and told that one boy aged about 20/22 years took her for giving prasad in the abandoned house near Mimit College's Hostel and he committed rape upon his daughter. When they put off the pant of his daughter (prosecutrix) then they saw blood was coming from her private part. Thereafter they came to know that unknown boy has committed rape upon her daughter and then they got admitted his daughter in Civil Hospital Malaout, for treatment where she was treated by the lady doctor and she can identify that boy, if he be produced before them. On the basis of aforesaid statement FIR was registered. Various proceedings were conducted at the spot. Site plan of the place of occurrence was prepared. Statements of the prosecution witnesses were recorded. Juvenile was arrested. After completion of necessary investigation, challan against the juvenile was presented.

3. On appearance of the juvenile, copies of documents were supplied to him free of costs. On finding a prima facie case under Sections 376 and 366 of the IPC, notice of allegations, was served upon juvenile to which he pleaded not guilty and claimed trial.

4. In order to prove its case, prosecution examined prosecutrix as PW-1, Ram Dev complainant as PW-2, Dr. Pooja as PW-3, Sunita as PW-4, HC Gurmit Singh as PW-5, HC Jagdish Kumar as PW-6, ASI Swaran

Singh as PW-7, Harsimran Singh Tehsildar as PW-8, Dr. Jagdeep Chawla, Medical Officer as PW-9, Dr. Parveen as PW-10, Sheela Devi as PW-11 and closed the prosecution evidence.

5. In his statement recorded under Section 313 of the Code of Criminal Procedure (in short – Cr.P.C.), juvenile denied all the incriminating circumstances appearing against him and pleaded his false implication. He pleaded that his father has inimical relations with police and alleged offence has not been committed by him. Since, the police was unable to trace the real accused, or culprit, therefore, planted a false case upon him. He never made any extra judicial confession nor went in grain market nor committed any rape upon the prosecutrix. Police arrested him when he was at home in the presence of respectable persons and planted a false case upon him and no test identification parade was conducted. Juvenile examined Hari Singh as DW-1, Shubhdeep Singh as DW-2, Darshan Singh as DW-3 and Gurmeet Singh as DW-4 in defence evidence.

6. The Principal Magistrate, Juvenile Justice Board, Sri Muktsar Sahib, after hearing the learned counsel for the parties vide judgment and order dated 25.01.2013, convicted and sentenced the juvenile, as aforesaid.

8. Feeling dissatisfied with the aforesaid judgment and order dated 25.01.2013, juvenile had directed the appeal before learned Additional Sessions Judge, Muktsar Sahib. The learned Additional Sessions Judge, Muktsar Sahib vide judgment dated 03.09.2013 dismissed the said appeal.

9. Still feeling dissatisfied with the aforesaid judgments passed by the Courts below, the present revision petition has been directed by the juvenile-petitioner.

10. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

11. Learned counsel for the appellant has submitted that test identification parade cannot be said to be valid as the appellant has been shown by the police to the prosecutrix. Hari Singh before whom the appellant is stated to have made extra-judicial confession has not supported the case of the prosecution. The appellant has been falsely implicated on account of enmity with the parents of prosecutrix.

12. I have carefully considered the said submissions but do not find any force in that submission.

13. Non-examination of PW Hari Singh before whom juvenile made extra judicial confession does not create doubt in the prosecution story in view of the overwhelming evidence. The prosecutrix aged 09 years has supported the case of the prosecution on all material particulars. Her testimony has been supported by medical evidence. Even the report of Chemical Examiner proves the factum of rape. Moreover, two Courts have found the juvenile guilty. It cannot be believed that on account of enmity the parents of the prosecutrix would lodge a false case. No body can even imagine that parents of the prosecutrix who is aged 9 years of age would put the honour of their daughter at stake merely for small enmity.

14. Learned counsel for the appellant has further submitted that appellant has already undergone detention for a period of two years and ten months in Special Home against the substantive sentence of three years. So, prayer has been made for taking lenient view regarding quantum of sentence.

15. I have carefully considered the said submissions but do not find any force in that submission.

16. The appellant has rubbish a girl of aged 9 years. So, no ground for reduction in detention in the is made out. The appellant being juvenile has already got concession as he has not been punished in accordance with the provisions of Indian Penal Code for an adult male. So, no ground for reduction in detention is made out.

17. Consequently, the judgment of conviction and order of the trial Court stand affirmed and the appeal stands dismissed.

18. A copy of this order be conveyed to the trial Court for strict compliance.

February 11, 2015

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**(K. C. PURI)
JUDGE**