

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3848 of 2014 (O&M)

Date of Decision:15.7.2015

Krishan and another

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Vishvanath Sharma, Advocate for the petitioners.

Ms. Harpreet Kaur, AAG, Haryana for the respondent.

NAVITA SINGH, J.

1. The present petition is filed challenging the judgment of conviction and order of sentence dated 10.9.2014 passed by Juvenile Justice Board, Yamunanagar (Board for short) and the order passed in appeal on 4.11.2014. The petitioners were directed to be sent to the Special Home for a period of three years by the Principal Magistrate of the Board. The appeal was preferred by the petitioners along with the third juvenile Parveen Kumar and the Appellate Court vide order dated 4.11.2014 dismissed the appeal with modification in the period for which the juveniles were to be sent to the Special Home. The period was reduced to two years.

2. Counsel for the petitioners argued that there were major contradictions in the statements of the witnesses. It was pointed out that according to the medical examination, there were no external injuries on the person of the victim, who was allegedly subjected to carnal intercourse by the petitioners and their accomplice and they were convicted for the offences punishable under Sections 365 and 377 read with Section 34 of the Indian Penal Code (IPC for short) and under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3. Referring to the report from the Forensic Science Laboratory, counsel for the petitioners argued that semen was detected on the underwear of the juveniles but no semen was detected on the clothes allegedly recovered from the three-wheeler, in which the offence was committed. Also on the anal swab, no semen was detected. It was contended that in view of the examination of the exhibits sent to the laboratory, there was no proof regarding the alleged offences having been committed with Sahil.

4. State counsel, however, argued that there was sufficient evidence against the petitioners and the victim had categorically given their names and stated about the incident. Absence of semen on the anal swab would not, stand alone, be evidence enough to acquit the petitioners.

5. It was then argued on behalf of the petitioners that according to Dr. Narender Kumar (PW6), the victim according to his information had not changed his clothes after the occurrence whereas the complainant i.e. father of the victim and the victim himself stated that the victim was wearing different clothes at the time of medical examination.

6. Jasmer Singh complainant stated that his son, who was 17 years old, had gone for the Jagran in the neighbourhood but did not return till 3.00 am. He then saw his son coming running towards the house and he was weeping. He informed the complainant and his wife that three boys had done something wrong with him. Nothing came in the cross examination of the complainant to show that at any time he was not speaking the truth or that his son had not narrated the incident to him and had not named one of the offenders. Right from the beginning, Sahil had named one of the assailants, who was known to him. However, he had said that there were two more boys with Bhola and identified all the offenders in the court. The

only contradiction is regarding the clothes having been left in the three-wheeler and the victim having worn different clothes after coming home and according to the doctor, clothes were not changed.

7. The complainant stated that recovery of clothes of Sahil was made from the three-wheeler and after that he wore the same clothes whereas according to the victim (PW2), he had gone to the hospital after wearing other clothes from the house. However, in any case, Sahil stated that the clothes, which he had worn for the Jagran, were left in the three-wheeler, as was also stated by his father and recovery of the clothes was made from the vehicle. Allowance should be given to the victim for minor contradictions because he having been subjected to unnatural intercourse by the convicts, was surely under shock and could have forgotten few things.

8. Counsel for the petitioners then argued that the case of the prosecution was that the boy Sahil had run back home and narrated the incident to his parents. His mother was cited as a witness but she was not examined. This argument was successfully countered by the State counsel submitting that since the father had been examined, it was not mandatory for the prosecution to have called the mother of the victim in the witness box and she was given up after the father was examined. The Investigating Officer was not examined which again would not be fatal because in cases like the present one, the statement of the victim is most important. Here the boy himself as also his father, fully supported the prosecution case.

9. State counsel submitted that the boy Sahil was mentally retarded and taking advantage of the fact, the petitioners and their accomplice sodomized the victim.

10. Counsel for the petitioners per contra argued that there was no such evidence on record that Sahil was mentally retarded. Rather the trial Court had put questions to him before his statement was recorded and all those were answered rationally and it was observed by the Principal Magistrate of the Board that Sahil was able to understand the questions to give rational answer. In the absence of medical evidence, it cannot be said that the victim was mentally retarded. Be that as it may, even if it be taken that the child was normal, the shameful act committed by the petitioners which constituted criminal offence, cannot be taken lightly.

11. It was lastly contended on behalf of the petitioners that they were remanded to the Special Home for two years, out of which they had already spent one year and three months and, therefore, they may be ordered to be released. Reliance was placed on the authority reported as Satish alias Dhanna Vs. State of M.P. and others 2009 (14) SCC 187. In the said case, the Supreme Court had sustained the conviction of the juvenile. The sentence was reduced to the period already undergone.

12. Each case has its own facts and attending circumstances. In the present case, it is felt that the sentence of the petitioners does not deserve to be restricted to the period already undergone in view of the offences committed by them. Merely because the petitioners were juvenile at the time when offences were committed, they would not be entitled to a lenient view. It is felt that the Appellate Court below already showed leniency by reducing the period to two years.

13. As a sequel to the discussion made above, the petition is dismissed.

(NAVITA SINGH)
JUDGE

15.7.2015
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