

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

Crl. Revision No.85 of 2015 (O&M)

Date of Decision: January 13, 2015.

Manish @ Monu

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Arun Singal, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This revision petition has been filed challenging judgment dated 17.12.2014 rendered by the learned Additional Sessions Judge, Sonapat whereby judgment of conviction dated 20.03.2014 and order of sentence dated 22.03.2014 passed by the Principal Magistrate, Juvenile Justice Board, Sonapat was upheld.

As per the prosecution version, petitioner as well as his co-convict, Munna had committed offence punishable under Section 376 IPC. FIR No.204 dated 12.04.2009 was registered on the basis of a written complaint made by Om Parkash son of Chhatar Singh averring that he has four children, Gopal being the eldest, younger to him is prosecutrix No.1 aged about 15-1/2 years thereafter,

another daughter prosecutrix No.2 aged about 14 years and a son, Ram Chander is youngest of all. On 11.04.2009 at about 11.00 a.m., all the family members went to sleep after dinner. When he and his wife Meena woke up in the morning on 12.04.2009 at about 6.00 a.m., they saw the door of the house lying open. Both prosecutrix No.1 and 2 were missing from the house. They searched for both their daughters but to no avail. On enquiry, they came to know that petitioner and co-accused were seen roaming around their house for the past 2/3 days. They were also found missing. It was alleged that both the prosecutrix had been enticed away by the petitioner as well as co-accused and appropriate action against both of them was prayed for.

On investigation, prosecutrix No.2 was recovered with the petitioner on 14.04.2009 and prosecutrix No.1 was recovered with the co-accused. Both the appellants/juveniles in conflict with law were apprehended on 14.04.2009 and were proceeded against. Both the prosecutrix got recorded their statements under Section 164 Cr.P.C. Medical examination of the prosecutrix as well as the juveniles were conducted at General Hospital, Sonapat. Charges were framed against the petitioner and the co-accused. The learned trial court found them guilty for the commission of the offence punishable under Section 376 IPC and they were sent to Central Jail II/Borstal Jail, Hisar, juvenile ward for a period of two years.

Petitioner as well as his co-convict preferred appeal against the said conviction and sentence, which was dismissed by the learned Additional Sessions Judge, Sonapat vide impugned judgment dated 17.12.2014. Petitioner – Manish @ Monu has preferred this revision petition challenging his conviction.

Learned counsel for the petitioner vehemently argues that the age of prosecutrix has been wrongly held to be 16 years. It is a matter of record that they were the consenting parties and the evidence of Dr. Subhash Gehlawat (PW5), Dental Surgen has been wrongly ignored. PW5 Dr. Subhash Gehlawat tendered his affidavit (Ex.PW5/A) in evidence and deposed that he had conducted the medicolegal examination of prosecutrix No.1 and 2 for age verification and as per his opinion, the dental age of prosecutrix No.1 was above 15 years but less than 18 years and similar is the case of prosecutrix No.2. Medicolegal reports of both the prosecutrix are Ex.PW5/B and Ex.PW5/C.

I have heard learned counsel for the petitioner and gone through the file.

It has come on the record that radiological examination of both the prosecutrix was conducted by Dr. Ashwani Kumar (PW8). He has prepared the ossification test reports Ex.PW8/A and Ex.PW8/B wherein the age of prosecutrix No.1 is stated to be 15 to 16 years and that of prosecutrix No.2 was 13 to 14 years. During his cross-examination, he has categorically stated that there could be no further variation in the age of both the prosecutrix as he had already given variation of age in the respective reports. PW9 Mukesh Kumar, Clerk of the office of Sub Registrar, Sonipat has proved the date of birth of prosecutrix No.2 to be 26.07.1995, the entry in this regarding being there at Sr. No.2422. Certified copy of her birth certificate is Ex.PW9/A. PW10 Surender Singh, Science Master of Govt. Middle School, Sonipat had brought the school record of prosecutrix No.1. He has deposed that as per the school record, the date of birth of prosecutrix No.1 is 03.11.1993. His report/certificate in this regard is

Ex.PW10/A. It has also come on the record that none of the doctors i.e., PW5 Dr. Subhash Gehlawat and PW8 Dr. Ashwani Kumar nor the prosecutrix or their father Om Parkash were confronted by the defence on the point of age of the prosecutrix. Thus, oral statements of the prosecutrix and their father in respect to their age is duly corroborated by the school record and birth certificate as well as ossification test reports proved by PW8 Dr. Ashwani Kumar.

Learned counsel for the petitioner also submits that no marks of injury were found on the prosecutrix nor the presence of semen is detected. Therefore, no offence punishable under Section 376 is made out against the petitioner.

However, keeping in view the facts and circumstances of the case, absence of marks of injury or semen would not be relevant and cannot be enough to say that no offence punishable under Section 376 IPC is made out especially on the face of the evidence led by the prosecutrix. Furthermore, this Court in exercise of revisional jurisdiction would not tread into factual aspects which have been upheld by two courts. No perversity has been pointed out in the said findings. No material evidence has been ignored while returning these findings.

No other point has been urged.

In view of the above, I find no material irregularity and infirmity in the impugned judgments, which would warrant interference by this Court in exercise of revisional jurisdiction.

Hence, this revision petition being devoid of any merit is dismissed.

(LISA GILL)
JUDGE

January 13, 2015.