

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 364 of 2014

- Rahul Upadhyay S/o. Satyapal Upadhyay Aged About 17 Years
R/o.Vill. Shekhpura, P.S. Binouli, P.S.Binouli, Civil & Rev. Distt.
Bagpat, Distt. Bagpat (U.P.)

---- Petitioner

Versus

- State Of Chhattisgarh Through: SHO, P.S. Kelhari, Distt. Koriya
(C.G.)

---- Respondent

For Petitioner : Mr. Samir Singh , Advocate
For State : Mr. D.R. Minj, Dy. Government Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV ORDER

Delivered on : 06 /12/2016

1. This revision petition arises out of order dated 30.04.014 passed in Criminal Appeal No. 21 of 2014, by which, juvenile's appeal against the order passed by the Juvenile Justice Board has been dismissed and the Appellate Court has affirmed the order passed under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act, 2000') directing the appellant to be sent to special home for three years.
2. Appellant, a juvenile, was apprehended on the allegation having been committed offence under Section 376 of the IPC against a minor girl aged about 6 years on 18.04.2012. It is alleged that the appellant after trespassing the house of the prosecutrix committed rape on her. As the prosecutrix is of reserve category offence under Section 3(2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, the Act, 1989) was also registered against the appellant.
3. The Juvenile Justice Board as well as the Appellate Court both have found the offence proved against the appellant relying upon the testimony of the prosecutrix, medical evidence and other corroborative evidence available on record. The Juvenile Justice Board having been found that the appellant has committed offence

under Section 452 & 376 of the IPC and also under Section 3(2)(v) of the Act, 1989, directed the appellant to be sent to special home for his reform and restitution, the order was affirmed by the Appellate Court.

4. Learned counsel for the appellant argued that both the Court below committed gross illegality in holding the offence against the appellant. He submits that ocular testimony of the prosecutrix is not corroborated by the evidence of Dr. Babita Raj (PW-6). It is further submitted that the ocular testimony of the prosecutrix is not reliable and suffers from contradictions and omissions and is not corroborated by the medical evidence. It is also submitted that even if the appellant is held guilty of commission of offence, the appellant being a juvenile, the order directing the appellant to be sent to special home is excessive and does not serve the purpose for which orders are required to be passed in the matter of a juvenile when he was held guilty of the commission of offence under the statutory provisions of the Act, 2000. It is also submitted that the appellant was detained in observation home, therefore, the maximum period of his detention, which includes the period in the observation home, cannot exceed three years. The impugned order does not provide any set off for the period during which the appellant remained in the observation home.
5. On the other hand, learned State counsel opposes and submits that the Courts below have not committed any illegality in holding the offence against the appellant, proved, which is based on the ocular testimony of the prosecutrix herself. It is submitted that the prosecutrix, though a child witness, has very clearly stated regarding the heinous offence of rape committed by the appellant, which is supported by the corroborative evidence of Dr. Babita Raj (PW-6) including medical evidence. The prosecutrix, a minor girl of 6 years, has given natural statement before the Court and there is nothing to show that she was tutored at the instance of the parents with intent to falsely implicate the appellant. It is further submitted that the order of sending a juvenile to a special home is to reform and restitution.
6. As far as the commission of the offence is concerned in view of evidence of the minor girl, who is stated to be aged about 6 years, in her testimony before the Court she not only identified the appellant in

the dock, but very clearly stated that while she was alone in her house, the appellant entered in her house and committed the offence which resulted in lot of pain and bleeding. She states that she had informed the incident to her maternal grand mother Panvati (PW-1), where after she was taken to hospital and she remained there admitted for 8 days. In her cross-examination also she reiterated regarding the criminal act committed by the appellant. The maternal grand mother Panvati (PW-1) has clearly stated in her evidence that the prosecutrix informed her regarding the criminal act and when she examined her private part, it was found bleeding, therefore, the prosecutrix was taken to the hospital, admitted and treated. She clearly stated that she lodged FIR (Ex.P-1) and has proved her signature. In her cross-examination, the statement that she herself had examined the private part of the prosecutrix which was found bleeding has not been controverted. The father of the prosecutrix Ramayan Singh (PW-3) has also stated that his daughter came crying and she was bleeding and she clearly stated about the incident. He also stated that after examination, the sister, working in the primary health center, stated that the vagina was badly torn, damaged. Investigation Officer D.P. Sahu (PW-4), who recorded the FIR (Ex.P-1) has been examined. He has proved the signature in the FIR. Dr. Babita Raj (PW-6) has stated that upon examination the vagina of the minor girl was found torn damaged and it was bleeding. This part of the evidence has not been controverted in her cross-examination. Therefore, in these circumstances it is clear that the prosecution has fully proved that the appellant had committed rape on the prosecutrix.

7. As far as the legality and validity of the order under Section 15 of the Act, 2000 is concerned, it is found that the Juvenile Justice Board has passed the order directing the appellant to be sent to special home for 3 years. This is one of the orders which could be passed under Section 15 of the Act, as the date on which the offence was committed, the Act, 2000 was in force, which was repealed only by the Act 2015 which came into force w.e.f. 01.01.2016.
8. The Social Investigation Report which has been placed on record shows that the appellant has left his studies after 5th standard due to poor economic condition. If the Social Investigation Report is

conjointly read along with the order, looking to the nature of allegation and the overt act committed by the appellant, the order passed by the Courts below cannot be said to be unwarranted.

9. As far as the submission that as the appellant has already exceeded the age of juvenility, therefore, he could not be sent to special him cannot be accepted in view of the Supreme Court judgment in case of **Salil Bali vs. Union of India and another [(2013) 7 SCC 705]**, wherein the Supreme Court has held as below.

“**61.** One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected. The general understanding of a sentence that can be awarded to a juvenile under Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000, prior to its amendment in 2006, is that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. Section 15(1)(g), as it stood before the amendment came into effect from 22nd August, 2006, reads as follows:

“15. (1)(g) make an order directing the juvenile to be sent to a special home for a period of three years:

(i) in case of juvenile, over seventeen years but less than eighteen years of age, for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile: Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.”

62. It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile. The said understanding needs to be clarified on account of the amendment which came into force with effect from 22-08-2006, as a result whereof Section 15(1)(g) now reads as follows :

“**15. (1)(g)** make an order directing the juvenile to be sent to a special home for a period of three years :

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do for reasons to be recorded, reduce the period of stay to such period as it thinks fit.”

The aforesaid amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a

sentence of three years, which could spill beyond the period of one year when he attained majority.”

10. However, the period, as already spent in the observation home, will have to be set off against the total period of 3 years which is directed by the Juvenile Justice Board for being kept in the special home. The revision petition is accordingly dismissed. The bail bond stand cancelled. The Juvenile Justice Board concerned shall issue necessary orders directing the parent / Special Juvenile Police Unit to produce the appellant before the Juvenile Justice Board so that he can be sent to special home for due and proper reform before his release upon completion of remaining period of stay in the Special Home. Before the release of the appellant, as directed above, a complete report about nature and extent of reform of the appellant shall be placed before the Juvenile Justice Board.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Chandra