

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 2147 of 2011

Date of Decision: 14.01.2016

Parveen

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. Naveen Sheoran, Deputy Advocate
General, Haryana, for the respondent.

Shekher Dhawan, J.

Present revision petition against judgment dated 19.8.2011 passed by Additional Sessions Judge, Faridabad vide which the appeal filed by the petitioner was dismissed on the ground that the said judgment is not sustainable in the eyes of law.

2. Relevant facts of the case, for the purpose of decision of the present petition that as per prosecution case, on 15.6.2010 Brij Mohan, father of the prosecutrix (name withheld) made complaint that his eldest daughter i.e. prosecutrix was aged about 13 years. On 13.6.2010, he along with his wife had visited his brother-in-law at

Nangli. They came back at about 9.00 P.M. The complainant left the home early in the next morning. At about 10.00 A.M., Shyan Lal son of Yad Ram informed the complainant that his wife was calling him. Complainant went his home and at that time his wife narrated the incident that the prosecutrix had disclosed to her that on the previous evening at about 6 P.M. when she was alone at her home, accused Manoj, Amit and Pawan entered their house through the terrace by jumping over the wall. Amit sat on a cot near the main gate, Manoj muffled her mouth and she was raped by Pawan and thereafter by Manoj. She became unconscious. At that time, her two sisters had gone to fetch vegetables and third had gone for grazing sheeps. She was frightened and embarrassed and as such had not disclosed the incident to her parents on the previous day.

3. On the basis of said information, investigation was carried out by the police and all the accused including the present petitioner were sent to face trial. Subsequently, vide order dated 15.9.2010, passed by the Chief Judicial Magistrate, Palwal, it was found that name of the petitioner was infact Parveen while Pawan was the name of his elder brother and because of this mistake, his name was mentioned as Pawan. Thereafter, the petitioner was declared juvenile vide order dated 15.9.2010.

4. The Juvenile Justice Board at Faridabad, on the basis of evidence available on record, held the petitioner to be juvenile in conflict with law and observed that the prosecution has been able to prove the involvement of juvenile in conflict with law for commission of

offence punishable under Section 376 IPC and passed order of sentence on 8.8.2011 that juvenile be kept in Special Home at Ambala for three years.

5. Petitioner preferred an appeal before the Additional Sessions Judge, Faridabad and the said appeal was dismissed vide judgment dated 19.8.2011 and present petition before this Court.

6. At the time of arguments, learned counsel for the petitioner mainly submitted that certain facts are not disputed in this case that present petitioner was juvenile at the time of commission of offence as his date of birth is 16.6.1994. The alleged occurrence had taken place on 15.9.2010. He had attained majority on 16.6.2012. He had been ordered to remain in Special Home for a period of three years and as per custody certificate available on record, he has already remained in custody for a period of two years and 22 days as on 21.10.2015 and by now he has already spent a period of about more than two years while remaining in Special Home against the sentence awarded to him to remain in Special Home for a period of three years.

7. Learned counsel for the petitioner has further submitted that as per view taken by Hon'ble the Supreme Court in ***Babban Rai and Another v. State of Bihar 2008 Cr.LJ 1038*** that in such like cases where the accused has been convicted for murder and sentenced to life imprisonment and age of accused person on the date of occurrence found to be below 16 years, they would be entitled to protection of Juvenile Justice (Care and Protection of Children) Act, 2000 and sentence of life imprisonment is liable to be set aside and

they could not be sent to remand home.

8. Learned State counsel could not lay his hands on any contrary provision of law on this point.

9. Having considered the submissions made by learned counsel for the parties and perusal of the record of the case, this Court is of the view that as regard to judgment of conviction against the petitioner is concerned, the same does not call for any interference because the same is based on the evidence available on record. The prosecutrix herself appeared as PW.2 and she had made specific allegations that the present petitioner along with co-accused committed the alleged offence under Section 376 IPC. Brij Mohan complainant (father of the prosecutrix) appeared as PW.1 and he has also supported the prosecution case in terms of his complaint Ex.P W.1/A. Their version is duly supported and corroborated by testimony of PW.3 Dr. Hema Chugh who had medicolegally examined the prosecutrix on 15.6.2010 and proved her Medicolegal Report as PW.3/A. Their version is duly supported by testimony of PW.4 Constable Ravinder, who is a witness to the disclosure statement and testimony of PW.5 Lady Constable Neetu Kumari, who had taken the prosecutrix for medical examination. PW.6 Anuj, Criminal Ahlmad in the Court of Additional Sessions Judge, Palwal produced the record relating to sessions trial of co-accused. PW.7 Sarwan Kumar, Draftsman proved the site plan Ex.PW.7/A. The remaining prosecution witnesses also supported the prosecution case against the above discussed prosecution evidence. The defence version is set up in the statement of accused under Section 313 Cr.P.C. and his

plea of denial does not find any support or corroboration. So, this Court is of the considered view that the prosecution case has been duly proved on the file and the said judgment of conviction and order passed by the Appellate Court do not call for any interference in that regard.

10. As regard the order of sentence passed by the Court below and the order affirmed by the First Appellate Court, this Court is of the considered view that the petitioner has already undergone actual sentence of two years and 22 days as per the latest custody certificate made available on file dated 21.10.2015.

11. As per the view taken by Hon'ble the Supreme Court in ***Babban Rai and Another v. State of Bihar*** case (*supra*), as in the present case, petitioner being juvenile in conflict with law was less than 16 years of age at the time of commission of offence and now having attained the age of majority cannot be sent to remand home. That way the order of sentence is modified to the extent that sentence of petitioner shall be restricted to the period which he has already spent while remaining in Special Home during the pendency of investigation and trial of the case only.

Present petition stands disposed of in above terms.

(Shekher Dhawan)
Judge

January 14, 2016

"DK"