

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.1831 of 2016 (O&M)

.....

Date of decision:21.10.2016

Chand Singh

...Petitioner

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anshuman Dalal, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') against the judgment dated 29.4.2016 passed by learned Additional Sessions Judge, Rohtak.

As stated in the revision petition, the impugned judgment dated 29.4.2016 passed by the learned Additional Sessions Judge in appeal against the judgment of conviction and order of sentence dated 17.11.2014 and 19.11.2014 respectively passed by the Principal Magistrate, Juvenile Justice Board, Rohtak, (hereinafter referred to as 'the JJB'), whereby the petitioner has been convicted for the offences under Section 323, 452 and 302 IPC and has been sentenced to remain in protective custody, is based on conjecture and surmises and against the settled principles of law.

I have heard learned counsel for the petitioner and have gone through the record. The record of the lower Courts was also summoned.

From the record, I find that FIR No.379 dated 9.10.2011 was registered for the offences under Sections 323, 307, 302, 452, 376 and 511 IPC at Police Station Sadar, District Rohtak.

The brief facts of the case of the prosecution as mentioned in the judgment dated 17.11.2014 of the JJB, Rohtak, are as under:-

“The brief facts of the case of the prosecution are that on 09.10.2011, when ASI Anup Singh along with other police official was present in Village Dhamad, information was received from Police Post Ghilod that Banita d/o Prem Sharma r/o Sanghi has been admitted in a burn condition in PGIMS, Rohtak Ward No.4. On this information, ASI Anup Singh rushed to PGIMS, Rohtak and got opinion of doctor qua injured Banita that she was unfit for statement. Therefore, statement of his uncle Hem Chander was recorded. In that, statement it was recorded that Hem Chander s/o Magni Ram, caste Brahman, r/o Sanghi is resident of said address and doing work of white wash and paint and his wife has become blind after his marriage. They are four brothers and his three brothers are residing in village. One of his brother Prem is residing in Vijay Nagar and working as Electrician in PGIMS. He is having no issue and his aged mother is residing with him. His wife and his mother have called Banita d/o Prem Singh for their care for

the last eight years and she is also residing in village Sanghi with them and studying in 10+1 class in Government School, Sanghi. On 08.10.2011, when he along with his wife Usha Devi was sleeping on the first floor and his niece Banita and his mother Vidya Devi were sleeping on the ground floor, at about 3.00 a.m. night they heard crying of Banita and when he came to see, his niece Banita was ablazed by one Chand Singh s/o Shakti Singh, Caste Jat after trespassing into the house. He tried to caught hold him on which he injured him and his mother. When he fell down and that boy run away from house, he has got admitted his niece Banita into PGIMS, Rohtak and his mother was also got admitted in PGIMS, Rohtak. On this complaint, by the complainant a case under section 323, 307, 452 of IPC was made out. Investigation was conducted. Statements of witnesses were recorded. Statement of Banita under Section 164 Cr.P.C. was recorded. During investigation offence under Sections 376/511 of IPC was added. Offence under Section 302 of IPC was also added during the investigation because Banita died due to burn injuries. Juvenile-in-conflict with law Chand Singh was apprehended. After completion of investigation challan against the juvenile-in-conflict with law as filed before Juvenile Justice Board.”

The learned JJB after hearing learned counsel for the parties and after appreciating the evidence convicted the present petitioner for the offences

under sections 323, 452 and 302 IPC and sentenced him to be sent to Special Home for a period of three years. A perusal of the findings shows that though the complainant turned hostile, but before the death of Banita (since deceased), who was admitted in burnt condition in PGIMS, Rohtak, got recorded her dying declaration Ex.P.1/A, which was recorded by learned Judicial Magistrate Ist Class on 11.10.2011. The learned Magistrate appeared as PW-11 and has duly proved the dying declaration of Banita. The Court held that as per the medical opinion she was fit to make the statement. As the statement was recorded after recording the opinion of the doctor, there is nothing on the record to disbelieve this dying declaration. Further more, this dying declaration is supported and corroborated by medical evidence. Banita in her statement had specifically alleged that Chand Singh caused hurt to her uncle, her grand-mother and also run away after burning her by pouring kerosene oil upon her. It was also stated that he tried to commit force with her and when she tried to run, he set her ablaze. The dying declaration of a person has a sanctity attached to it and it needs no corroboration when it is duly proved and looks natural, true and reliable and corroborated. In the present case even PW.10 Dr. Sandeep Kumar had deposed that on 09.10.2011, the grand-mother of victim, Vidya Devi also received injuries and she was taken into PGIMS, Rohtak for treatment. The learned Principal Magistrate of JJB has correctly appreciated the evidence in right perspective and, in no way, the findings can be held as perverse i.e. against the evidence or illegal. I have also gone through the judgment of the learned Additional Sessions Judge, Hisar. Nothing has been

pointed out as to which material evidence has not been considered by the Courts below and as to which material evidence has been misread by the Courts below. The findings given by the JJB and the learned Additional Sessions Judge have consistently held the present petitioner guilty and sentenced him to be sent to special home to remain in protective custody for three years.

These findings are correct as per evidence and law and do not require any interference from this Court and the revision petition having no merits is dismissed.

October 21, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No