IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 3901 of 2015 (O&M)
Date of Decision: 09.05.2016
***

Manoj

.. Petitioner

Vs.

State of Haryana

.. Respondent

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present:- Mr. H. S. Baath, Advocate
for the petitioner.
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ANITA CHAUDHRY, J.

Lower Court record has been received.

The petitioner is challenging the conviction and sentence recorded by the Courts below.

FIR No. 28 dated 01.04.2013 was registered by complainant Rameshwar at Police Station Nathu Sarai Chopta for the offence under Sections 376 and 452 IPC. The allegations in the FIR were that on 31.03.2013 the prosecutrix was at home alone when Manoj, their neighbour entered the house and raped her. The accused fled from the spot after pushing him.

The case was investigated. The accused was arrested. He was found to be a juvenile, therefore, was forwarded to Juvenile Justice Board(for short, the Board) for enquiry.

Notice of accusation for the offence under Sections

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376 and 452 IPC and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for brevity, the POCSO Act) was served. During enquiry, the prosecution produced eleven witnesses, including the prosecutrix, her brother, the doctor and the investigating officer.

In his statement under Section 313 Cr.P.C., the delinquent pleaded false implication on account of old rivalry. He relied upon some documents.

The Board, on appraisal of the evidence on record, vide judgment dated 08.08.2014 held the delinquent guilty under Sections 376 and 452 IPC and Sections 3 and 4 of the POCSO Act vide order dated 12.08.2014 and sent him to the Special Home for three years.

The appeal filed by the juvenile was partly accepted. He was acquitted under the POCSO Act. His conviction and sentence qua other offence was maintained.

Dis-satisfied with it, the petitioner has preferred the instant revision petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel had assailed the impugned judgment on the ground that the identity of the petitioner had not been established as the prosecutrix had named the culprit as Kala, while the name of the petitioner is Manoj. He had further urged that there was contradictions regarding the presence of complainant Rameshwar at the spot. Elaborating his submissions,

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he had urged that in her statement under Section 164 Cr.P.C., the prosecutrix had not disclosed about the presence of her brother Rameshwar, but in her statement in the Court she had deposed that her brother had come to her rescue. He had further urged that oath was not administered to the prosecutrix and some witnesses in Court and no sanctity can be attached to those statements. He had further urged that there is conflict between the ocular and medical evidence.

The prosecution had examined the prosecutrix and her brother Rameshwar. Both of them supported the prosecution case in entirety. The prosecutrix specifically deposed that on 31.03.2013 when she was alone in the house, the accused came, gagged her mouth and took her into the room and raped her. Her statement finds support from the testimony of PW3 Rameshwar. He deposed that on reaching the house, he heard the cries of his sister and from the widow, he saw that the accused was raping her and the accused fled after pushing him.

The case in hand cannot be said to be a case of mistaken identity because the complainant and the accused are neighbourers. The occurrence took place in the broad daylight at about 4:00 p.m. The documents available on record show that the name of accused was mentioned herein as Manoj @ Kala. Moreover, it was not the case of the accused that he was not known as Kala.

In her statement under Section 164 Cr.P.C., the prosecutrix had specifically stated that her brother had arrived at

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the spot. Similarly, in the FIR PW Rameshwar, the brother of the prosecutrix had stated that on seeing him at the spot, the accused fled away. Only because the prosecutrix had not mentioned the name of her brother in her statement under Section 164 Cr.P.C., it cannot be said that PW Rameshwar had not come to the spot. The prosecutrix had deposed that her brother Rameshwar had come. PW3 Rameshwar had also deposed on the same lines. Presence of PW Rameshwar cannot be doubted.

The omission to mention the factum of administering oath to a witness is not fatal to the prosecution case. This contention of defence was adequately dealt with by the Board and the observations in this regard are discernible from para No.28 of the judgment, which are as under:-

> *"28. So far as the contention of learned defence counsel that oath has not been administered to the prosecution witnesses that is, the victim and his brother, same is not tenable as omission to take oath or making of affirmation is not fatal to the case of prosecution as it does not render inadmissible any evidence. Reliance is placed on* ***Bal Krishan Julka Vs. K.L. Verma AIR 1982 Del. 19,*** *wherein it has been observed that evidence of witness recorded without administering oath by additional controller is admissible as credibility of witness has to be determined with reference to the statement that he made while in the witness box. Reliance also placed on* ***State of Rajasthan Vs. Darshan Singh @ Darshan Lal, 2012(2) RCR***

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> ***987 SC.*** *In the present case the testimonies of both PW1 and PW3 inspires confidence in the mind of the board as both the witnesses were examined at length and has nothing has come to shake the veracity of their statements."*

The medical evidence corroborates the version of the prosecutrix. Semen was detected on the clothes of the prosecutrix. The prosecutrix was examined on the next day. The prosecution version cannot be thrown out only because the prosecutrix had no external mark of injury. She would have been overpowered by the petitioner. Bruises were found on the petitioner in the medical examination. Even otherwise, it was not his defence that she was a consenting party.

The evidence was rightly analyzed by the Court below. There is no reason to interfere. It is well settled that there is a limited scope of interference while exercising revisional jurisdiction. Re-appraisal of evidence is not permitted save in the case of manifest error. The findings are neither illegal nor perverse. The accused had raped a young girl. The Board has already taken a lenient view in the matter of sentence and warrants no interference.

As a result of aforesaid discussion, the conviction and sentence of the petitioner under Section 376 and 452 IPC is maintained. Resultantly, the revision petition is dismissed. Records be sent back.

May 09, 2016 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

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