

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

**Crl. Rev. No.3981 of 2015 (O&M)
Date of decision : 23.04.2016**

Kuldeep

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Mukesh Sharma, Advocate
for the petitioner.

Ms. Vibha Dhiman, AAG, Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

This revision is directed against the order of conviction & sentence dated 21.04.2015/29.04.2015, passed by the Juvenile Justice Board, Panipat and the order dated 30.09.2015 passed by the Additional Sessions Judge, Panipat, vide which the conviction of the appellant has been affirmed.

The essential facts necessary for disposal of the petition are being reproduced. Seema wife of Balbir Singh made a complaint on 11.03.2013 and disclosed that her youngest daughter aged 4 year was playing outside the house. After a while she noticed that the daughter was not around. She started looking further and heard her cries coming from Surrender

Chawkiwala's house. The complainant peeped from the window and saw Kuldeep son of Surender removing her clothes. The complainant immediately rushed in. The complainant had complained that had she not reached, the juvenile would have raped his daughter.

Acting on this complaint FIR No.87 was registered on the same day under Sections 376, 511 IPC. The appellant was found to be a juvenile and was sent up for trial before the Juvenile Justice Board, Panipat.

Notice of accusation was served under Section 376 IPC to which the juvenile pleaded not guilty. The prosecution examined six witnesses. In the statement recorded under Section 313 Cr.P.C. the juvenile simply denied the incriminating evidence. In defence, he had examined Naresh – DW1 and Ram Kumar – DW2, the neighbourers.

The Juvenile Justice Board found the evidence acceptable and recorded his conviction under Section 376 read with Section 511 IPC and ordered the convict to be kept in the Special Home for a year, besides making other observations regarding his education.

Aggrieved with the judgment and order, an appeal was preferred before the Additional Sessions Judge, which was dismissed on 30.09.2015. Aggrieved with the same, this revision.

The records were summoned. I have heard both the sides.

Counsel for the revisionist has urged that the witnesses examined by the prosecution were interested witnesses and no independent witness was examined by the prosecution. It was urged that DW1 had made a statement that the revisionist had appeared for his examination on that day and no such incident had happened but that evidence was ignored by both the Courts below. In the alternative it was urged that the juvenile was 16 years old and had already undergone 7 months and 17 days of custody and the sentence be reduced to already undergone.

The State counsel supported the judgment and urged that the allegations were serious and the cries of the child had attracted the mother and the mother had seen the incident with her own eyes and the petitioner has been unable to explain how the child entered his house. It was urged that the statement of DW1 was rightly disbelieved as the juvenile did not take a plea that he had appeared in any examination on that day and it was an afterthought.

I have carefully gone through the record. The revisionist was the neighbour and was known to the family. It was easy for him to take the 4 year old child to his house. The complainant found that the child missing and started searching for her. The cries of the child attracted the mother and she peeped inside and found the accused removing the clothes of the child. The matter was not reported initially as it involved the

honor of the family but fearing that the accused may again molest the child, the incident was reported to the police. The delay had been explained by the complainant. The accused had not brought out any motive for false implication. He had absolutely no defence to raise. Though the defence witnesses had stated that the accused was not home and had gone to appear in his final examination but it was not a defence raised by the accused. It appears to be an afterthought. The Juvenile Justice Board had rightly convicted the appellant under Section 342 and 354 IPC and Section 8 of the POCSO Act. The appeal was rightly dismissed. The sentence awarded to the appellant cannot be said to be on the higher side.

The petition is dismissed.

23.04.2016

sunil

(ANITA CHAUDHRY)
JUDGE