

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Rev. No.770 of 2016 (O&M)

Date of Decision: 04.05.2016

Dharam Singh

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ram Kumar Saini, Advocate
for the petitioner.

Mr. Arun Kumar, A.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

Petitioner-Dharam Singh faced trial in case FIR No.378 dated 11.09.2013 registered under Sections 376, 354 IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Pataudi, Gurgaon.

The FIR, in question, was registered on the basis of statement made by prosecutrix on 11.09.2013, wherein, it was stated that her brother had made physical relations with her and on protest, her father also hurled abuses and gave beatings to her. She went to the doctor along with her sister and brother-in-law and it was found that she was pregnant. It was also stated that when she was repeatedly raped by her brother for a longer

period, she had intimated her parents but they scolded her. However, during investigation, it was revealed that the accused-petitioner was juvenile and on getting Social Background Report, he was produced before the Juvenile Justice Board. Notice of accusation was served upon him to which he pleaded not guilty and claimed enquiry. The prosecution was able to prove the commission of offence punishable under Section 376 IPC against the petitioner beyond shadow of reasonable doubt. The involvement of accused being in conflict with law was ordered to be kept in detention at Special Home, Ambala.

Aggrieved by the order of Principal Magistrate, Juvenile Justice Board, Gurgaon, the appeal was filed before the Additional Sessions Judge, Gurgaon, which was also dismissed and the judgment of conviction and order of sentence passed by the Principal Magistrate Juvenile Justice Board, Gurgaon was upheld.

Aggrieved by the aforesaid judgments of both the Courts below, the present revision petition has been filed by the petitioner.

Learned counsel for the petitioner submits that the prosecutrix herself had resiled from her statement. The doctor, who got blood from the juvenile, was not examined. It cannot be said that the blood sample sent to Forensic Science Laboratory, Madhuban, was of the juvenile and as such, the findings recorded by both the Courts below are liable to be set aside.

Ultimately, when the Court was not agreeing with the submissions made by learned counsel for the petitioner, the notice of motion was issued qua quantum of sentence by considering the argument of learned counsel for the petitioner that the petitioner is facing proceedings since lodging of FIR i.e 11.09.2013 ; he has also undergone actual custody of more than 02 years and 6½ months and hence, his sentence may be reduced to the period already undergone.

Learned counsel for the respondent-State submits that it is a heinous crime as the rape was committed by the brother upon her minor sister and the benefit of reducing sentence should not be given to the petitioner as it will give a wrong message to the society.

Heard the arguments of learned counsel for the parties and have also perused the judgments of both the Courts below as well as other documents available on the file.

The facts of the case regarding lodging of FIR; facing of trial; conviction by the Juvenile Justice Board and dismissal of appeal are not disputed. It is also not disputed that the victim was minor and the rape was committed by her brother, who is the present petitioner. The victim became pregnant and it cannot be said that it was a case of false implication. Moreover, notice qua quantum of sentence was issued only on the ground that the petitioner is facing the agony of trial since lodging of FIR i.e 11.09.2013 and has undergone actual custody of more than 02 years and 6 ½ months against the total sentence of three years. The case of the prosecution has been proved but being juvenile, lesser sentence was awarded. The submission of learned counsel for the petitioner for reducing the sentence cannot be accepted keeping in view the nature of offence and relation between accused and the victim as the duty of the brother is not only to protect his sister but to safeguard her interest as well.

In the present case, the offence has been committed by the brother upon a minor girl and as such, he cannot be given the benefit of reduction of sentence to the period already undergone. Moreover, the petitioner has undergone actual custody of 02 years 06 months and 19 days as on 31.03.2016, which comes to more than 02 years and 07 months. The total sentence of the petitioner is likely to complete.

No ground is made out to interfere even on the quantum of

sentence. The petition is accordingly dismissed.

However, the State is directed to consider the case of the petitioner for his release on completion of the sentence awarded to him.

04.05.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE