

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1470-2013

Date of Decision:- 02.02.2017

Naurattan

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sidakmeet Sandhu, Advocate,
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

RITU BAHRI, J. (Oral)

Present revision petition has been filed against the judgment of conviction and order of sentence dated 17.08.2012 passed by the Additional Sessions Judge, Sonipat, vide which the appeal against the judgment of conviction dated 07.03.2011 and order of sentence dated 25.04.2011 passed by the learned Principal Magistrate Juvenile Justice Board, Sonpat, has been dismissed.

Briefly, the facts of the case are that the FIR was registered on the statement of prosecutrix wherein she stated that she along with her brother had gone to her sister Lajwanti at Tara Nagar, Sonipat. Her sister had gone to Diwan Farm for harvesting wheat crop and at about 11.00 a.m. she along with her brother Deepu had started for fields to meet their sister.

Thereafter, when they reached near Diwan Farm, a boy on cycle came from

Sonipat side and stopped his cycle near her. He stated that he will give biscuits to prosecutrix if she goes along with him. Prosecutrix sat on the cycle and in the meantime before his brother could sit on the cycle the boy started cycling at fast speed. On reaching near Hero Factory, he stopped his cycle. Her brother Deepu has followed them. After stopping the cycle, the said boy took prosecutrix to nearby wheat field on his shoulders and the wheat field had boundary wall. After taking her to wheat field, he threatened to kill prosecutrix if she made any noises. After that he removed the clothes of prosecutrix as well as his own clothes. Her brother has disclosed these facts to her sister Lajwanti. When accused was about to rape her, her sister and brother-in-law Ramesh along with 3-4 ladies came near the fields while making noises. Upon this the accused tried to escape, however, was caught by her sister and brother-in-law Ramesh and others. Juvenile disclosed his name as Naurattan son of Keshu Ram. The boy was given beatings at the spot. Prosecutrix stated that if her sister and brother-in-law had not reached, the accused would commit rape upon her.

After registration of the FIR, the investigation was conducted and statements of accused were recorded. The challan was presented under Sections 376 read with Sections 511 and 506 IPC.

In order to prove the charges against the juvenile, prosecution had examined Dr. Rajiv Sethi as PW1, Dr. Abha Bhavan as PW-2, prosecutrix as PW3, brother-in-law of Prosecutrix as PW-4, sister of prosecutrix as PW-5, ASI Balraj Singh as PW-6, ASI Jaipal as PW-7, ASI Rajbir Singh as PW-8, Ram Parsad as PW-9 and HC Ramesh as PW-10.

On conclusion of the prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C., wherein the allegations

made by prosecution were denied and pleaded false implication. In defence, the accused had examined Raj Kumar as DW-1.

Trial Court, after going through the entire evidence led by the parties, convicted and sentenced the accused-petitioner for an offence punishable under Section 376 IPC. Appeal against the said judgment and order was dismissed by the Appellate Court vide order dated 17.08.2012.

Learned counsel for the petitioner has argued that non-examination of Deepu, real brother of the prosecutrix, would make the prosecution case doubtful.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that in the present case, the prosecutrix was a child aged about 10 years and she was examined as PW-3. She was picked up by juvenile on his cycle and was taken to wheat fields, where juvenile removed all his clothes as well as clothes of the prosecutrix. In the meantime, brother of prosecutrix had informed elder sister of prosecutrix and his brother-in-law regarding the fact that prosecutrix has been taken away by juvenile. On hearing cries of the prosecutrix, her elder sister, brother-in-law and others reached the spot i.e. wheat fields where they found that juvenile and prosecutrix were without clothes and juvenile had made prosecutrix to sit on his lap. Prosecutrix was crying. The juvenile tried to escape, he was caught by persons gathered at the spot and was given beatings. The version of PW-3 was corroborated by version of PW-4 and PW-5 i.e. her sister and brother-in-law. They asserted that they were cutting wheat crops in the fields of Hukam Chand and they were informed by brother of prosecutrix regarding this fact and on hearing cries they went to

the spot.

Both the courts below have held that depositions of PW-3 to PW-5 were consistent, material particular and there was no material discrepancies in the evidence produced by all the three prosecution witnesses. The minor contradictions in the deposition of PW5 have been taken to be totally immaterial.

The evidence of PW4 has also been found not to be contradictory in nature rather explanatory. The cross-examination of PW-3, a girl of 10 years old shows that, nothing could be highlighted at all from the cross-examination of prosecutrix to doubt her veracity. In her cross-examination also she had clearly stated that when the juvenile had taken her away, her brother Deepu was with her. She further stated that after juvenile was caught, he was given beatings by his brother-in-law and sister and this fact further corroborated in the shape of medical evidence of PW-1 Dr. Rajiv Sethi, who had found four injuries on the person of juvenile. She had denied that a quarrel had taken place between her brother-in-law and juvenile prior to occurrence and also denied that juvenile had ever worked with her brother-in-law and there was any dispute between her brother-in-law and juvenile. Non-examination of Deepu, brother of the prosecution, would not be fatal to the case of the prosecution. The evidence of the prosecution was found reliable, trustworthy and consistent, which was supported by evidence of PW-4 and PW-5 as well as injuries on the person of juvenile.

Moreover, the argument of learned counsel for the petitioner has been considered by the Courts below and has been rejected keeping in view that real brother-in-law and sister, who appeared as PW-4 and PW-5

stood the test of cross-examination. The age of the younger was eight years and his non-examination would be of no consequence. The evidence of defence has been considered by the Courts below and the defence could not prove PW-5 Ramesh was a contractor and used to hire labour and juvenile had been working with him as labour. In the absence of any such evidence, the version of the defence has been rejected rightly.

Moreover, keeping in view that PW5, real sister of the prosecutrix, would not have allowed to put the honour of 10 years old sister at stake for the sake of a minor dispute between her husband PW4 and juvenile Narauttan to implicate him in such like case. Petitioner juvenile has been convicted for attempt to commit rape to a minor girl of 10 years for a period of three years.

On 23.05.2016, the sentence of the petitioner was suspended and revision petition was admitted and at that time, the petitioner has undergone 1 year, 2 months and 12 days, out of total substantive sentence of 3 years, as per custody certificate dated 09.07.2013.

In view of the totality of facts and circumstances of the present case, coupled with the reasons aforementioned, the present revision petition is hereby dismissed so far as the conviction of the petitioner is concerned.

Now the question for consideration would be whether the petitioner being a juvenile could be convicted for three years for an offence under Section 376 IPC read with Section 511 IPC or not.

Reference, at this stage, can now be made a judgment of Supreme Court in case **Koppula Venkat Rao Vs. State of A.P., 2004 (3) Supreme Court Cases 602**, whereby Section 511 IPC in a case of rape

paragraph Nos.10 and 11 of the said judgment is as under:-

“10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on the aspect.”

In the aforesaid judgment, the conviction was altered from Section 376 IPC to Section 376/511 IPC. It was held that the custodial sentence of 3½ years would meet the ends of justice. The accused, in that case, was a major. As per the aforesaid judgment, an attempt to commit an offence can be punished by half of the longest term provided for that offence.

In the facts of the present case, as per Section 15 (g) of the Juvenile Justice Act, a juvenile who has committed a heinous crime, can be sent to a Special Home for a period of three years. Therefore, applying the

Venkat Rao's case (supra), one-half of three years would come to 01 year and 06 months. As per custody certificate, the petitioner has already undergone 01 year and 02 months in custody. Moreover, the petitioner has facing the criminal trial since the date of registration of present FIR i.e for almost 13 years and he is not facing any other trial.

Consequently, in view of the above position, the instant revision petition on merits is dismissed. However, the judgment of conviction, recorded by the Courts below are upheld. The petitioner is allowed concession of probation for a period of six months on his entering into a bond in the sum of ₹20,000/- with one surety of the like amount to the satisfaction of the trial Court undertaking therein that he shall keep peace and maintain good behaviour and shall appear and receive sentence as and when called upon to do so during the said period.

February 02, 2017
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No