

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.3090 of 2016 (O&M)
Date of Decision: August 11, 2017

Love Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Manish Dadwal, Advocate,
for the petitioner.

AMIT RAWAL, J.

CRM No.26889 of 2016

Prayer in the application is for condonation of delay of 18 days
in filing the criminal revision petition.

For the reasons mentioned in the application, delay of 18 days
in filing the revision is condoned.

CM stands disposed of

Criminal Revision No.3090 of 2016

Petitioner has preferred the present criminal revision against the
judgment dated 11.3.2014 rendered by the Principal Magistrate, Juvenile
Justice Board, Ludhiana, whereby he has been sent to Special Home for
three years under Sections 376 read with Section 511 IPC and fine of
₹500/-, which has been upheld by the Additional Sessions Judge, Ludhiana
vide judgment dated 13.5.2016.

The present revision petition is accompanied by CRM

No.26890 of 2016 under Section 397(1) for suspension of sentence on the premise that during the pendency of the appeal before the Additional Sessions Judge, the petitioner was on bail and had been taken in custody on the date of pronouncement of the judgment, i.e., 13.5.2016.

Mr.Manish Dadwal, learned counsel appearing on behalf of the petitioner submitted that there has been misappreciation and misdirection of the documentary evidence, much less oral evidence as for constituting an offence under rape, it is necessary that there has been a penetration, to some extent, of a male organ. The chemical report in the aforementioned case is conspicuously absent. The version of the doctor has not been examined in correct perspective as the hymen of the prosecutrix was found to be intact. There was no mark of injury on her external genitalia. In fact, it was a case of wrecking vengeance as complainant Soni, mother of the prosecutrix and her husband owed money to the father of the petitioner in respect of having purchased certain grocery items. In order to avoid the liability, roped petitioner Love Sharma, aged 15 years.

He further submitted that PW-4 Dr.Kanwaljit Kaur did not support the prosecution version. PW-3 HC Harmesh Kumar admitted that the parcels containing sample/swabs were sent after 72 hours. There are stark contradictions amongst the prosecution witnesses. They have not been able to support the commission of offence and, thus, urged this Court for setting-aside the impugned judgments by acquitting the petitioner.

I have heard the learned counsel for the petitioner and appraised the paper book.

There has been a spate of crime not amongst the adults, but also trickled down the young boys, who have not even become major. Present

case is a classical case where petitioner aged 15 years was found to have committed the offence as envisaged under Section 375 IPC (amended w.e.f. 3.2.2013) upon a girl aged 6 years. He has been challaned for commission of offence under Section 376 IPC.

PW-5 (prosecutrix), PW-1 Soni (mother of the victim) and PW-2 Dharminder Mukhi (father of the prosecutrix) have been cogent and consistent in their statements regarding commission of the offence.

PW-10 Dr.Harish Kirpal has tendered affidavit Ex.PW9/A showing that petitioner Love Sharma is capable of performing intercourse. As per the version set out in the FIR and come on record during the trial, on 26.3.2013 at about 6.00 PM, the prosecutrix along with other children was playing in the late evening and at about 8.30 PM, when she was about to asleep after taking meals, complained of pain in her private parts and on enquiry, she revealed that children were playing in the house of Jania and Love Sharma asked Bikram Singh @ Vicky to hide themselves and in this process, Love Sharma took off her underwear and made her to sit on his thighs and tried to compel her to suck his penis and attempted to insert into her private parts.

Reliance to the testimony of PW-4 Dr.Kanwaljit Kaur and her affidavit Ex.PW4/A that the hymen was intact and there was no mark of injury, would not give a clean chit to the petitioner-accused owing to the amendment caused in Section 375 IPC, which is valid and effective from 3.2.2013. Amended Section 375 IPC reads thus:-

“375. A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.”

The present case clearly falls within the aforementioned amended provision. Where there is even an attempt to penetrate into the vagina, the scope of interference in the revision petition is limited until and unless there is a gross violation. There are concurrent findings of the Courts

below. The petitioner has not been able to make out the case within the
aforementioned parameters, enabling the Court to form a different opinion
than the one arrived at.

Non-production of the chemical report would not carry much
weight in view of the aforementioned amended provisions.

As an upshot of my findings, I do not find any illegality or
perversity in the impugned judgments. While upholding the same, revision
petition is dismissed.

August 11, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No