

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

Criminal Revision No. 3894 of 2016 (O&M)

Date of decision : November 21, 2017

Mukesh Narang @ Mani

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Umesh Kumar Kanwar, Advocate
for the petitioner.

Mr. Rahul Rathore, DAG, Punjab.

LISA GILL, J.

The petitioner has been found guilty of offence punishable under Section 376-D IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' – for short). Consequently, it was directed by the learned Principal Magistrate, Juvenile Justice Board, Jalandhar vide order dated 21.05.2015 that the petitioner (juvenile) be sent to the Special Home (Fit institution) for a period of three years for the offence punishable under Section 376-D IPC and Section 4 of POCSO Act. Appeal preferred by the petitioner against the said judgment dated 21.05.2015 was dismissed by the learned Additional Sessions Judge, Jalandhar vide judgment dated 28.07.2016. Aggrieved therefrom, the present revision petition has been preferred by the

petitioner.

Brief facts of the case necessary for adjudication of this petition are that FIR No. 249 dated 12.12.2013 was registered on the statement of the victim herself. The victim stated that she had one sister and a brother. On 11.12.2013, her sister had gone to the shop of the petitioner to purchase eggs at about 8.00 p.m. When she did not return after some time, the victim went in search of her sister. It is stated that when she was at a little distance from the petitioner's shop, the petitioner as well as one Chottu (co-accused since acquitted on the basis of identity) picked her up and took her to a vacant plot behind their shop. Her clothes were removed by them and her person was violated by them turn by turn. The statement of the victim was recorded and videographed as well. Formal FIR as above (Ex. PW6/A) was registered.

The victim was subjected to medical examination at Civil Hospital, Jalandhar on 12.12.2013. No mark of fresh injury was found on the person of the victim. Vaginal swabs were taken by PW4 Dr. Simardeep Kaur and handed over to the police authorities. As per chemical examiner's report (Ex. PX), spermatozoa was detected on the swabs sent for chemical examination. PW4 Dr. Simardeep Kaur opined that possibility of rape could not be ruled out in this situation. Statement of the victim, who was aged about 9 years at the time of incident, was recorded under Section 164 Cr.P.C. before the learned learned Judicial Magistrate First Class on 12.12.2013.

Investigation was carried out, in this case, by PW6 Inspector Rajinder Kumar. Investigation was completed. Separate report under Section 173 Cr.P.C. was presented against the co-accused. A report against the present petitioner was presented before the Juvenile Justice Board. The petitioner pleaded innocence and claimed trial.

Prosecution examined as many as nine (9) witnesses to prove its case against the petitioner. The petitioner while recording his statement under Section 313 Cr.P.C. denied all the incriminating evidence put to him. He pleaded innocence and false implication in this case. He specifically stated that the co-accused Jaspal @ Chottu already stood acquitted by the learned Additional Sessions Judge on 10.09.2014 and his case being similar to that of the co-accused, he should be acquitted. It is further stated that there was a money dispute between the family of the complainant and the petitioner, therefore, he was falsely implicated in this case. Two witnesses were examined in defence.

Learned Juvenile Justice Board concluded that the prosecution had proved its case beyond reasonable doubt against the petitioner and he was, accordingly, held guilty and directed to be sent to the Special Home for the period, as detailed above. An appeal was preferred by the petitioner, which was also dismissed by the learned Additional Sessions Judge, Jalandhar on consideration of the facts and circumstances of the case vide judgment dated 28.07.2016.

Learned counsel for the petitioner submits that the medical evidence on record does not corroborate the ocular version given by the victim. As per the medico legal report, duly proved by PW4 Dr. Simardeep Kaur, it is clear that there were no visible injuries on the person of the victim. Therefore, the possibility of the offence being committed by two persons is remote. Moreover, the co-accused, in this case, stands acquitted. Therefore, the present petitioner, who is similarly situated should also be acquitted in this case. It is, thus, prayed that this revision petition be allowed and the impugned judgments and order dated 21.05.2015 and 28.07.2016 be set aside.

Learned counsel for the State while refuting the said arguments submits that the prosecution has duly proved its case beyond reasonable doubt qua the present petitioner. Therefore, the well reasoned and logical judgments based on the evidence on record, be upheld.

I have heard learned counsel for the parties and have gone through the summoned record with their able assistance.

The victim, in this case, was admittedly about nine years old at the time of incident. She has given a graphic description of the event as it unfolded. The victim has been opined to be a competent witness, capable of giving a statement on oath, before recording of her statement. A perusal of the record reveals that the victim has given a consistent version right from the beginning till her examination before the learned Juvenile Justice Board. The victim's parents - PW1 and

PW2 (the victim has wrongly been marked as PW2 again) have clearly stated that their younger daughter had returned but when the victim did not return home, PW1 as well as her husband went to look out for her. They heard cries from the nearby open plot. When they reached the spot, the present petitioner and the co-accused Chottu fled from the spot. Their daughter was crying. Similar was the statement of the father of the victim. FIR, in this case, was promptly lodged on 12.12.2013 itself. Medical examination of the victim was conducted. As per the chemical examiner report (Ex. PX), spermatozoa was found present on the vaginal swabs of the victim. In the light of the said evidence, mere absence of injuries on the person of the victim cannot be a ground for acquittal of the petitioner.

Similarly, an argument urged strenuously is that a similarly situated co-accused has been acquitted, therefore, the present petitioner should also be acquitted and the present petition should be allowed. I have carefully gone through the judgment dated 10.09.2014 passed by the learned Additional Sessions Judge, Jalandhar whereby co-accused Jaspal @ Chottu has been acquitted giving him the benefit of doubt. It is relevant to note that in the matter of the co-accused the victim did not identify the said accused person present in the Court, as the person (Chottu) who committed rape upon her on 11.12.2013. Parents of the victim have also not identified the said accused to be the one present on the spot at the time of occurrence. It is, in this situation, that while affording the benefit of doubt, the co-accused was acquitted of the

charge framed against him. Therefore, his acquittal can be of no benefit to the present petitioner as the victim as well as her parents have steadfastly given a consistent view disclosing the commission of offence by the petitioner.

Contention that the parents of the victim are interested witnesses, therefore, no reliance should be placed on their testimonies is clearly misplaced. In the factual matrix of the case, they are the most natural witnesses. They had seen the petitioner flee from the spot. Therefore, argument of learned counsel for the petitioner that absence of an independent witness creates a dent on the prosecution version is untenable, hence rejected.

Learned counsel for the petitioner further urged that the defence of the petitioner has not been considered. It is submitted that the victim's mother was dealing in the sale etc. of potatoes. She had borrowed a sum of ₹3000/- from the mother of the petitioner. When the petitioner's mother asked for return of her money, the present petitioner was falsely implicated in this case. Apart from the fact that there is no palpable and substantial evidence on record to show that a sum of ₹3000/- was indeed borrowed by the victim's mother, it is opposed to all probability that a parent would expose her nine year old daughter to such a situation merely because of a dispute of ₹3000/-. Similarly, the so-called discrepancies in the testimonies of the parents are not material so as to cast a shadow of doubt on the prosecution case. There is clear and cogent evidence on record to prove the commission of the offence

by the petitioner.

Learned counsel for the petitioner is unable to point out any illegality, perversity, infirmity or error apparent on record in the impugned judgements and order which call for interference by this Court in exercise of its revisional jurisdiction.

Prayer for reduction of the stay of the juvenile – petitioner at the Special Home, cannot be accepted in the facts and circumstances of the case. The victim, in this case, was a nine year old child. She has been subjected to an offence at such a tender age. There are no mitigating circumstances in favour of the petitioner for reduction of this period.

Accordingly, this revision petition is dismissed.

November 21, 2017
rts/om

(Lisa Gill)
Judge

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*