

CRR- 951 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CRR- 951 of 2015

Date of Decision:16.2.2017

Mithlesh

---Petitioner

vs.

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against judgment dated 4.12.2014 passed by the Juvenile Justice Board, Faridabad (in short “the Board”) whereby the accused/respondent No. 2 has been acquitted of the offence punishable under Sections 376, 506 of the Indian Penal Code (in short “IPC”) registered vide FIR No. 121 dated 6.8.2012 at police Station, Sadar, Ballabgarh, District Faridabad.

Counsel for the petitioner has submitted that the prosecution examined as many as 13 witnesses including the prosecutrix PW2, a girl aged about 12 years and Mithlesh PW3 (petitioner herein) mother of the prosecutrix. It is further submitted that the Board failed to appreciate

statement of material witnesses namely the prosecutrix and her mother in right perspective and committed a gross error resulting in miscarriage of justice.

I have heard counsel for the petitioner, perused the paper book and the records.

The Board in para 11 of the judgment has recorded material observations and a relevant extract therefrom reads thus:-

“The testimony of PW2 prosecutrix and PW3 Mithlesh (mother), is replete with high improbabilities and same belies logic reason. PW2 prosecutrix testified before the Board that on 5.8.2012, her cousin i.e. juvenile Ajay came into her room and committed rape upon her. In her cross examination, she stated that there were two rooms and one hall in her house and at the time of incident, there were as many as 12 family members present inside the house. She further stated that in the room in which she was sleeping, her sister as well as grand mother were also present. She further stated that her application Ex. PW2/A was dictated by Poonam. She further admitted that her family had a property dispute with the family of juvenile. She further categorically admitted that application Ex. PW2/A was moved by her before the police at the behest of her mother. From perusal of the above mentioned facts as elicited from the cross-examination of the prosecutrix, this Board finds it hard

to believe that at a time when as many as 12 family members were present in a small house merely comprising of 3 rooms and juvenile committed forcible sexual intercourse with prosecutrix and she did not make any noise or call for help. Furthermore, she has further herself admitted that her sister and her grand-mother were also present in the room where she was sleeping and it is somewhat difficult to believe that despite the presence of other persons in the same room, juvenile in question could actually commit rape upon the prosecutrix. If such an incident would have indeed occurred, it is quite impossible that no one else in the room would have noticed it. Thus, this Board does not find the testimony of prosecutrix credible and trustworthy so as to fasten guilt upon the juvenile.”

A plain reading of testimony of the prosecutrix makes evident that observations extracted hereinbefore get substantiated from the facts elicited in cross examination of the prosecutrix. Counsel for the petitioner has nothing to say if the observations recorded by the Board in para 11, in any manner, contradict the facts on record. As has been rightly held by the Board, it is beyond human prudence that a young boy would be in a position to sneak into the house of the prosecutrix in the presence of 12 family members much less commit rape upon the prosecutrix in the presence of her sister and grand mother. It further appears that allegations brought forth by the prosecution are absurd and story propounded by the prosecutrix

and her mother is highly improbable. In this view of the matter, I do not find any error much less illegality in the conclusions drawn by the Board in favour of the juvenile.

For the aforesaid reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

16.2.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No