

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

Crl. Revision No. 889 of 2017(O&M)

Date of Decision: 14.12.2018

Parveen @ Bane Singh

.. Petitioner

Vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Ms. Mayuri Lakhanpal, Advocate-Amicus Curiae &
Mr. Deepak Jindal, Advocate
for the petitioner.**

Ms. Priyanka Sadar, AAG Haryana.

ANITA CHAUDHRY, J.

The petitioner-jvenile in conflict with law was tried in FIR No. 771 dated 31.12.2014 registered under Sections 376 read with Section 511, 452 and 506 IPC and Sections 3 and 4 of Protection of Children from Sexual Offence Act, 2012 (for brevity, POCSO), Police Station Camp Palwal, at the instance of PW12 mother of the victim.

It was the case in the FIR that on 13.12.2015 the complainant (PW12) had gone to work. At about 12 O' clock a boy trespassed into her house and committed wrong act with her daughter(PW11) aged about 11 years. After registration of the case, statement of victim under Section 164 Cr.P.C. was recorded wherein she stated that the accused attempted to rape her. She later identified the juvenile as the accused. The victim was got medically examined from PW9 Dr. Ruchi Mangla. Opinion regarding the age of victim was taken from PW10 Dr. Rameshwari, according to which

she was found to be aged between 12-14 years. Disclosure statement of the juvenile was recorded and he demarcated the spot of occurrence. Site plan was got prepared. On completion of investigation, challan was filed. The juvenile was tried by the Juvenile Justice Board for the charge under Sections 376 read with Section 511, 452 and 506 IPC and Section 4 of the Act.

At the trial, the prosecution examined twelve witnesses and the evidence of prosecution was closed by Court order as it failed to conclude the evidence despite available sufficient opportunities.

The juvenile abjured the trial.

After analyzing the evidence on record, the Board vide judgment dated 02.07.2016 held the petition guilty under Sections 376 read with Section 511 and 452 IPC and under Section 18 of the Act. He was sent to Special Home for a period of three years.

The appeal filed by the petitioner was dismissed by the Court below vide order dated 17.12.2016.

Dis-satisfied therewith, the petitioner has filed the instant revision petition.

I have heard learned counsel for the parties and have perused the paper-book.

The main stress of learned counsel for the juvenile was that there was sole testimony of victim, which was not corroborated by any other independent source and the Court below have erred in placing implicit reliance upon contradictory statement of the prosecutrix.

A perusal of record show that though the complainant, mother of the victim was examined as PW12 on 18.11.2015 and her cross-

examination was deferred on the request of defence. Though, zimni order of that date shows that the witnesses present were examined, but later it came to the notice of State counsel that cross-examination of PW12 was not conducted. The summons to witnesses were sent but presence of PW12 could not be procured. The prosecution evidence was closed by Court order and the application filed by the prosecution under Section 311 Cr.P.C. was dismissed by the Board. No doubt, statement of complainant recorded by way of examination-in-chief cannot be relied upon, but statement of the victim is available on record. It is settled law that the conviction of accused can be based on solitary statement of the prosecutrix. The only test is that it should be scrutinized with great care and caution so as to rule out the possibility of false implication. A perusal of statement of the victim would reveal that she had given a vivid account of the incident. The victim (PW11) had stated that the juvenile trespassed into her house and started molesting her. Her pant was removed and she was laid on the cot. Her younger brother and sisters raised alarm and the accused fled. She had identified the juvenile as the wrong doer and it was not a case of mistaken identity. She specifically deposed that she was known to the accused as he had come to take room on rent in their house. Her age given at the time of medical examination was 11 years. PW10 gave her opinion that the age was between 12 and 14 years. No evidence to the contrary was brought by the accused in this regard. The ocular version of the victim was supported with medical evidence. There were scratch marks on her finger and thigh. There was no reason to disbelieve the witness of tender age. The case of the prosecution cannot be thrown on ground only because of some minor inconsistencies in her deposition. This strengthens the fact that she was not tutored. The

petitioner failed to prove his plea of false implication. A suggestion was given to the victim that her mother was blackmailing people by filing false applications. But no evidence was led. No material was produced in this regard. It is settled that scope of interference in exercise of revisional jurisdiction are limited, unless it is shown that the Courts below have erred in law while passing the judgment. Learned counsel for the petitioner had failed to point any infirmity in the impugned judgments which warrants interference by this Court.

The findings of the Courts below qua conviction of the petitioner are affirmed.

Faced with the situation, learned counsel had urged that the petitioner is in Special Home since 26.12.2016 i.e. for more than two years and no other case is pending against him. During his stay in Special Home, his conduct has remained good and he had not indulged in any activity prejudicial to others. The petitioner is just 19 years of age.

Learned State counsel has not controverted the position that the petitioner is a first offender.

The petitioner has already undergone the agony of protracted trial as well as appeal for about four years. He has remained in Special Home for the last about two years. Considering the facts and circumstances of the case and the antecedents of the petitioner coupled with the nature of offence for which he has been convicted, this Court is of the considered opinion that ends of justice would be met if the sentence of the petitioner awarded under different head is reduced to the period already undergone by him. It is ordered accordingly. He be released forthwith, if not required in any other case.

With the above modification, the instant revision petition stands disposed of.

December 14, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No