

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

Criminal Revision No.921 of 2017(O&M)

Date of Decision: March 09 , 2018.

Amit Kumar and another

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana.

LISA GILL, J.

CRM No.8129 of 2017

For the reasons mentioned in the application as well as the arguments addressed, it is considered just and expedient to decide the case of the applicant/petitioners on merits rather than dismiss it on technical consideration of delay in filing the revision petition.

Accordingly, this application is allowed and delay of 25 days in filing the revision petition is condoned.

CRR No.921 of 2017(O&M)

At the outset, it is relevant to note that when notice in the application for condonation of delay in filing of this petition was issued, it was submitted that

the petitioners do not assail the impugned judgment and order dated 03.09.2015 and 07.09.2015, respectively, passed by the learned Principal Magistrate Juvenile Justice Board, Fardabad as well as judgment dated 11.11.2016 passed by the learned Additional Sessions Judge, Faridabad on merits. Relief was restricted to the quantum of sentence imposed upon the petitioners.

Brief facts relevant for adjudication of the case are that, FIR No.369 dated 21.06.2014 under Sections 363/366A/376/120B IPC, Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act') and Section 3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the SC/ST Act') was registered on the basis of a statement of the prosecutrix (Ex.PW2/A) recorded on 21.06.2014 in the presence of a legal-aid empanelled counsel. The prosecutrix aged about 12 years, stated that on 20.06.2014 at about 2.30 p.m. she was called by the petitioner – Ravinder @ Rabhu on her mobile phone. He asked her to meet him at City Park, Ballabgarh. Since the prosecutrix knew Ravinder for the past few months, she went to City Park, Ballabgarh at about 3.00-4.00 p.m. Petitioner No.1 – Amit was present alongwith petitioner No.2 – Ravinder in the said park. Both of them asked her to accompany them for half an hour. Initially, the prosecutrix refused but both of them insisted that she should join them. The prosecutrix was induced to sit alongwith them on their motorcycle. On the way, the petitioner – Ravinder called three of his friends, out of whom the prosecutrix knew one of them as Jagdish. All the three persons came on separate motorcycles and joined the petitioners and the prosecutrix. They stopped their motorcycles near the Jawar fields abutting the road. The prosecutrix found the petitioners as well as Jagdish and two other boys talking amongst themselves about her. Petitioner No.2 –

Ravinder thereafter forcibly took the prosecutrix in the Jawar fields while asking his four friends to stand guard on the road. The prosecutrix stated that rape was committed upon her by the petitioner – Ravinder in the Jawar fields. She shouted for help, but none came to her rescue. After some time, a few passers-by saw four persons including the petitioner – Amit standing near the Jawar fields and questioned their presence at the spot. When they failed to give a satisfactory explanation regarding their presence at such an odd spot, one of the passer-by called the police. The petitioner – Amit was apprehended at the spot, whereas Ravinder, Jagdish and two other boys fled alongwith their motorcycles. The prosecutrix and petitioner – Amit were brought to the Police Post Gadpuri and father of the prosecutrix was called there at about 6.00/7.00 p.m. The victim disclosed the entire incident to her father. The prosecutrix and her father were brought to Police Station City Ballabgarh on 21.06.2014 at about 1.30 a.m. as it was informed that the victim had been brought by the juveniles from Ballabgarh. Statement of the prosecutrix was recorded by PW2 ASI Raj Bala, CAW, Ballabgarh in the presence of a legal-aid empanelled counsel.

Accordingly, FIR (Ex.PW8/A) was recorded. Medical examination of the victim was conducted on 21.06.2014 by PW10 Dr. Sonia Upadhayay, Government Hospital, Ballabgarh. Her statement under Section 164 Cr.P.C. (Ex.PW16/B) was recorded on 21.06.2014 itself. Site plan (Ex.P18/B) was prepared. Petitioner – Ravinder was arrested on 28.06.2014. Medical examination of the petitioner – Ravinder was conducted as well. Samples collected from the victim as well as the accused were sent for forensic examination to Forensic Science Laboratory, Madhuban. The motorcycle allegedly used by the petitioner- Amit was recovered from his house at village Ridika. Birth certificate of the

victim recording her date of birth as 28.03.2002 was taken in possession. Final report under Section 173 Cr.P.C. was presented against the petitioners – Amit and Ravinder after completion of investigation. None of the other persons so named were proceeded against.

Notice of accusation for the commission of offences punishable under Sections 363/366A/376/120B IPC and Section 4 of the POCSO Act was served upon the petitioners on 17.10.2014 to which they pleaded not guilty and claimed trial. The prosecution examined as many as 19 witnesses to prove its case. The petitioners/juveniles in their statements under Section 313 Cr.P.C. pleaded innocence and false implication. However, no evidence was led in defence.

The learned trial court on consideration of the entire facts and circumstances of the case concluded the petitioners to be guilty of the commission of the offences as charged and convicted them for the offences punishable under Sections 363/366A/376(2)(g)/120B IPC and Section 4 of the POCSO Act vide order dated 03.09.2015. By a separate order dated 07.09.2015, the petitioners were directed to be sent to Special Home, Ambala for three years for their involvement in the offences as above. Both the petitioners preferred appeals against their conviction and sentence, which were however dismissed by the learned Additional Sessions Judge, Faridabad vide judgment dated 11.11.2016 while upholding their conviction and sentence. Aggrieved therefrom, the present revision petition has been filed.

As mentioned earlier, learned counsel for the petitioners does not challenge the impugned judgments on merits and does not assail the conviction of the petitioners. However, it is submitted that the evidence on record does

indicate that the victim was very much in touch with the petitioner – Ravinder. She had friendly relations with him. She proceeded to meet Ravinder out of her own accord when he called her. It is admitted by the victim that she used to frequently visit the mobile shop maintained by the petitioner – Ravinder. She further admitted that she had gone to meet him without informing her parents. Reference is made to the cross-examination of the victim wherein she accepted as correct that when she and Ravinder were going towards the fields, the villagers caught hold of them and handed them over to the police.

In respect to the petitioner – Amit, learned counsel for the petitioners submits that in her statement under Section 164 Cr.P.C. the victim stated that when she was taken in the fields by petitioner No.2 – Ravinder, petitioner No.1 – Amit had gone to take water while the others stood guard. No other overt act has been attributed petitioner – Amit. No other person except the present petitioners have been proceeded against in this case. None of the alleged villagers or the passers-by have been associated with the proceedings. In this view of the matter, it is contended that there are sufficient grounds for reducing the sentence imposed upon the petitioners.

Learned counsel for the petitioners while referring to the medical evidence submits that the injuries on the person of the victim do not necessarily point out the commission of offence as alleged while accepting that the question of consent or otherwise of the victim in this case is irrelevant.

Learned counsel for the petitioners vehemently argues that the petitioners are also of tender age. It is further argued that the victim was studying in the 9th Standard and the petitioners were studying in 10th Standard and they were well known to each other. Learned counsel for the petitioners has relied

upon a decision dated 31.10.2017 of this Court in CRR No.56 of 2017 [Rohit v. State of Haryana] as well as the decisions in Mahinder Kumar v. State of Haryana 2016(2) RCR (Criminal) 75 and Sanjay @ Kala v. State of Haryana 2011(2) RCR (Criminal) 899 to pray that this petition be allowed to the extent of reduction of the sentence imposed upon the petitioners as the maximum sentence has been imposed upon them.

Learned counsel for the State has opposed this petition while submitting that no ground whatsoever is made out for reduction of the sentence imposed upon the petitioners. The petitioner – Amit was arrested at the spot. Even though no specific allegations of overt act of commission of rape was attributed to him, he is equally liable to be punished having played an active role in the entire incident. The victim has revealed specific allegations against both of the petitioners. Medical evidence on record proved the commission of the offences on the victim who was of a tender age. It is submitted that consent or otherwise of the victim in any case is irrelevant. It is however not disputed that none of the other persons so named/stated to be present at the time of the incident have been proceeded against.

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

It is not in dispute that the petitioners as well as the victim in this case were students of Class 10 and Class 9, respectively. It is further not disputed that the victim and the petitioner – Ravinder were known and in touch with each other. The victim had proceeded to City Park, Ballabgarh to meet the petitioner – Ravinder after receiving a phone call from him. As rightly conceded by learned counsel for the petitioners, the question of consent or otherwise by the victim in

this case is irrelevant. Conviction of the petitioners has not been challenged. It is not in dispute that both the petitioners have undergone about one year and six months of the sentenced imposed upon them. Age of the petitioners is not in dispute.

Keeping in view the factual matrix of the present case, it is considered just and expedient to reduce the period of detention of the petitioners in the Special Home. Accordingly, conviction of the petitioners is maintained and period of detention of both the petitioners at the Special Home is reduced from three years to two years.

With the said modification in the sentence, the present petition is disposed of.

March 09 , 2018.
'om'

(LISA GILL)
JUDGE

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