

Crl. Revision No. 831 of 2018 (O&M)

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

**Crl. Revision No. 831 of 2018 (O&M)
Date of decision : 31.08.2018**

Mahesh

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Sharad Kumar Yadav, DAG, Haryana.

ANITA CHAUDHRY, J.

This revision is directed against the judgments of conviction and sentence recorded by the Principal Magistrate, Juvenile Justice Board and the Additional Sessions Judge holding the juvenile guilty and sentencing him to the following punishment:-

Offence Under Sections	Sentence
363 IPC	Detention in Special Home for 2 years
366-A IPC	Detention in Special Home for 3 years
376 IPC	Detention in Special Home for 3 years
6 of POCSO Act	Detention in Special Home for 3 years

Both the Courts below held that the minor had been enticed and raped.

Crl. Revision No. 831 of 2018 (O&M)

The incident occurred on 30.01.2014. The father of the girl child lodged a complaint and told the police that his daughter was born in July 1999. She used to accompany his wife to the factory for work. Since his wife had fallen ill she did not go for work and his daughter went alone to the factory. She returned at 6:00 P.M. but left the home again and did not return and they searched for her in neighbourhood but could not trace her. The complainant contacted the factory owner who informed him that about half an hour ago the victim was in his factory. The complainant reached the factory and found the labour contractor who gave the information that a labourer working in the factory had taken his daughter somewhere and he did not know his whereabouts. The victim was recovered from the custody of the petitioner after 19 days on 17.02.2014 from Rishikesh.

The statement of the victim was recorded and Section 376 IPC and Section 6 of the POCSO Act were added and she was sent for her medical examination. On completion of investigation challan was presented.

To support the case, the complainant stepped forward and gave the details of the incident and identified the signatures on the complaint and stated that the custody of his daughter was handed over to him and he had given the school leaving certificate to the police.

Besides him, the Head Teacher brought the school leaving certificate, Dr. Reema proved the MLR, the Record Keeper proved the scheduled caste certificate. After analyzing the evidence the Juvenile Justice Board held the petitioner guilty and sentenced him to the punishment mentioned here-in-before.

Aggrieved with the verdict the juvenile in conflict with law filed an appeal which too was dismissed.

I have heard the counsel of both the sides.

Crl. Revision No. 831 of 2018 (O&M)

The submissions on behalf of the petitioner is that the girl was not a minor and it was the duty of the prosecution to prove that she was a minor and the school leaving certificate was not enough to prove her age. It was urged that the girl had stayed with him for over 18 days and she had been travelling with him to different places and the victim had made improvements in her statement as in the first statement she does not allege that rape was committed and such a testimony should not have been accepted. It was urged that semen was detected from the clothes and not on the vaginal swabs.

The submission of the State counsel is that the girl was recovered from the custody of the accused and there was no other person who came in contact with the victim and the minor had explained that she had given the statement to the Magistrate as she was under threat at that point of time and the hymen was ruptured and the girl was only 16 years old and the complainant got clue from the labour contractor who had given his name and it is not a case of anyone else being involved. It was urged that the clothes were found smeared with semen.

Both the Courts below had examined the testimony of the witnesses and had believed their depositions as it found the statement of the victim to be trustworthy and reliable. The testimony of the witnesses found support from medical evidence as well.

On perusing the evidence and hearing the counsel, I find that there is no merit in this revision. The victim was a minor. The record from the school had been called for. Since she was a minor, the question of consent did not arise. Both the Courts below have dealt with the statement which was first given to the police. The girl had come from the custody of

Crl. Revision No. 831 of 2018 (O&M)

the accused and she was under his influence. It was clearly a case of inducement. The girl had been violated. The counsel for the petitioner have been unable to indicate any misreading of evidence on the part of the trial Court and the Appellate Court, which may necessitate interference by this Court in the revision. Being a paternal jurisdiction, the circumstances required for interference under the revisional jurisdiction is illegality, impropriety or incorrectness committed by the Courts below. I find that there is no illegality or incorrectness and there is no scope for interference.

The revision is dismissed being merit less.

31.08.2018

Sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No