

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

**CRR No. 860 of 2018(O&M)
Date of Decision: 10.05.2018**

Abhey Singh @ Matru

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Surinder Kumar Daaria, Advocate
for the petitioner.

Mr. Anmol Malik, AAG., Haryana.

LISA GILL, J(Oral).

Petitioner is aggrieved of judgment and order dated 10.05.2017 and 17.05.2017 respectively, passed by the learned Principal Juvenile Justice Board, Rewari (for short 'J.J.B.'), vide which the petitioner has been held guilty of the offence punishable under Section 376 IPC and sent to the Special Home, for a period of three years, as per Section 18 (1) (g) of the Juvenile Justice Act, 2015 (for short 'J.J.Act'). The appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge, Rewari, vide impugned judgment dated 21.02.2018.

Brief facts necessary for the adjudication of the case are that FIR No. 21 dated 06.02.2016, under Section 376 IPC, was registered at Police Station Kosli, on an application submitted by the complainant on 06.02.2016. The complainant is the father of the prosecutrix/victim. The complainant stated that he had two daughters and a son. His younger daughter about 20 years of age was mentally retarded. The complainant's daughter went from her house to attend the call of nature on 06.02.2016. She did not return for a considerable time. The complainant who was sitting

outside his house, heard the sound of his daughter weeping. The complainant traced out his daughter in the mustard fields, where he found the juvenile in conflict with law i.e. the petitioner committing rape upon his daughter. The petitioner, ran away from the spot, on seeing the complainant. The complainant approached the family of the petitioner in this regard upon which the petitioner's elder brother threatened to kill the family of the complainant. With the said allegations, the complaint was presented on 06.02.2016 itself, on the basis of which the abovementioned FIR Ex.PW12/A, was registered.

The petitioner was taken in protective custody. Site plan was prepared. Statements of the witnesses under Section 161 Cr.P.C., recorded. Final report under Section 173 Cr.P.C., was presented on completion of the investigation.

Notice of accusation under Section 376 IPC was served upon the petitioner on 19.04.2016, to which he pleaded not guilty and claimed inquiry. Prosecution examined as many as twelve (12) witnesses to prove its case.

The petitioner in his statement under Section 313 Cr.P.C., denied the incriminating evidence put to him and claimed innocence besides false implication. No evidence was led in defence.

Learned trial Court, on considering the facts and circumstances of the case concluded that the prosecution had succeeded in bringing forth its case against the petitioner and held the petitioner to be guilty of the offence punishable under Section 376 IPC. He was accordingly directed to be sent to the Special Home for a period of three (03) years.

It is specifically observed by the J.J.B. that the victim in this case was a mentally retarded person. As per medical certificate Ex.PB, she

was shown disabled to the extent of 90%. The complainant has given a truthful, succinct narration of the events as they unfolded. Appeal preferred by the petitioner was also dismissed by the learned Additional Sessions Judge, Rewari. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that the evidence on record does not justify the conviction of the petitioner, who was of a tender age of about fifteen (15) at the time of the alleged incident, whereas the prosecutrix was admittedly twenty (20) years old. First and foremost, it is argued that the prosecutrix in this case was not examined, which has dealt a fatal blow to the prosecution case. It is further argued that there is nothing on record to show that the prosecutrix was in-fact of unsound mind and she suffered from such a malady/mental retardation which could never improve. Mere reliance on the certificate Ex.PB by both the learned Courts below was not sufficient. Mental level of the prosecutrix should have been evaluated as the certificate Ex.PB was issued on 04.06.2008. Learned counsel for the petitioner relies upon a judgment of Division Bench of this Court in **Nagahia Singh Vs. Ajaib Singh and another, 1965 PLR 857**, to submit that specific steps should have been taken by the learned trial Court to determine the mental condition of the prosecutrix. In the absence of this exercise, it is urged, the petitioner has been wrongly declared guilty of the offence punishable under Section 376 IPC. It is further submitted that the prosecutrix was much older than the petitioner. Furthermore as per the Chemical Examiner Report, no semen was detected on the vaginal swab of the prosecutrix or her clothes.

It is contended that the present petitioner has been falsely implicated due to political rivalry between the parties, which is admitted by the complainant and his wife. Learned Courts below, it is submitted have

erred in not appreciating that both the abovesaid witnesses have admitted that the petitioner's mother and mother of the victim had contested the Panchayat elections in the year 2014, in which mother of the prosecutrix had lost. Learned counsel for the petitioner also argues that it is opposed to all probabilities that in case the complainant was present at the spot and he saw the act being committed by the petitioner, he would have failed to apprehend the culprit at the spot. Moreover, the medical evidence on record, it is forcefully urged does not point to the commission of the offence in question. It is thus prayed that this petition be allowed, conviction and sentence imposed upon the petitioner be accordingly set aside.

In the alternate, learned counsel for the petitioner urges that keeping in view the age of the petitioner, the sentence of three (03) years imposed upon the petitioner be reduced to the one already undergone by the petitioner. Petitioner is stated to have undergone about one (01) year and four (04) months of the sentence of three (03) years imposed upon him.

Per contra, learned counsel for the State has opposed this petition while submitting that there is clear and cogent evidence on record to indicate the culpability of the petitioner. The impugned judgments and orders passed by the learned Courts below, it is stated are well reasoned and based on a thorough consideration of the evidence on record. Therefore, it is prayed that this petition be dismissed.

I have heard learned counsel for the parties and with their assistance have gone through the record of this case, which was requisitioned.

The complainant in this case is the father of the victim. The victim is a mentally retarded person suffering from 90% disability.

Certificate Ex.PB issued on 24.09.2008 by the office of Civil Surgeon,

Rewari, after examination of the prosecutrix by a board of three (03) doctors, General Hospital, Rewari, reveals that she is suffering from 90% disability. It is specifically mentioned that this condition is not likely to improve. The re-assessment of the patient has not been recommended. Therefore, argument on behalf of the petitioner that the prosecution case has been dealt a fatal blow because of non-examination of the prosecutrix is clearly untenable, hence rejected.

It is noticed that an application dated 13.10.2016 Ex.PA was moved for giving up the victim on account of her mental disorder. This application was duly allowed and never subjected to challenge by the petitioner. Thus, it is conclusively proved that the prosecutrix was indeed suffering from mental disability which was not likely to improve. No evidence to the contrary was led by the petitioner. In-fact, not even a suggestion was not put to any of the witnesses to the effect that the prosecutrix was not mentally retarded. **Nigahia Singh's case (Supra)** relied upon by the petitioner, is thus not applicable to the facts and circumstances of the present case.

The defence sought to be raised that the petitioner has been falsely implicated due to political rivalry has not substantiated by any evidence on record. Admission of the complainant and his wife to the effect that the petitioner's mother and mother of the prosecutrix contested Panchayat elections in the year 2010, in which the petitioner's mother had won, by itself cannot lead to an inference of false implication of the petitioner nearly six years thereafter. Learned Courts below have rightly negated this argument.

Another argument vehemently urged on behalf of the petitioner is that the complainant's version is negated and nullified by the fact that the

petitioner was not apprehended on the spot by the complainant. The said argument is noticed only to be rejected for the simple reason that the complainant has duly explained that the prosecutrix was in a naked condition and as a reflex action, he immediately closed his eyes (the prosecutrix being his twenty (20) year old daughter). The complainant further explained that his first priority was to get his young daughter dressed. This is clearly a natural and normal reaction on the part of a father of a young girl who is proved to be mentally retarded. Moreover, the matter was immediately reported to the police promptly on 06.02.2016 itself. There is no delay in lodging of the FIR which may raise a doubt of false implication on the basis of any concoction, afterthought or consultations. In this situation, absence of semen or injuries on the person of the prosecutrix cannot by itself lead to an inference of innocence of the petitioner. In respect to the argument regarding consent on the part of the prosecutrix, learned Additional Sessions Judge, Rewari, has rightly observed that there is no question of consent of the prosecutrix, who was of unsound mind. It would indeed be fallacious to presume consent on the part of the prosecutrix merely because she was older than the petitioner as urged by learned counsel for the petitioner, especially keeping in view the mental state of the prosecutrix. The prosecution has indeed succeeded in proving its case beyond reasonable doubt against the petitioner.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned judgments and orders passed by the learned Courts below, which calls for interference by this Court in exercise of revisional jurisdiction.

Alternate prayer for reduction of the sentence imposed upon the petitioner is without any merit. The prosecutrix in this case even though

twenty (20) years of age, was a mental retarded girl. Evidence on record clearly proves the commission of the offence as alleged. The Hon'ble Supreme Court in **Sevaka Perumal etc. vs. State of Tamil Nadu, AIR 1991 SC 1463** and reiterated in **State of M.P. vs. Basodi, 2009 AIR (SC) 3081** observed that:-

'Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.'

Keeping in view the factual matrix of this case, I do not find any mitigating or special circumstances which would justify reduction of sentence imposed upon the petitioner.

Accordingly, judgment and order dated 10.05.2017 and 17.05.2017, passed by the learned Principal Juvenile Justice Board, Rewari and judgment dated 21.02.2018 passed by the learned Additional Sessions Judge, Rewari, are upheld.

Petition is accordingly dismissed.

10.05.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No