

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2209-2017 (O&M)

Date of Decision:-10.07.2019.

Vinod Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Tarun Singla, Advocate for the petitioner/Juvenile
in conflict with law.

Mr. Vikas Chopra, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

This revision petition has been preferred by the above named petitioner-accused challenging the order dated 29.05.2014 passed by the learned Principal Magistrate, Juvenile Justice Board, Sonapat vide which the petitioner was convicted and sentenced for the offences under Sections 363, 366-A, 376 IPC arising out of FIR No.464 dated 2.12.2010 registered at Police Station City, Gohana and order dated 07.06.2016 passed by the First Appellate Court vide which the appeal of the petitioner was dismissed and the judgment of conviction and order of sentence was upheld.

This case relates to the rape upon the minor prosecutrix by the petitioner. On the basis of the application ExPW-9/A of the mother of the prosecutrix, FIR Ex.P-8/A was registered.

It is the prosecution story that the accused was remotely related

to the family of the prosecutrix. On the fateful date i.e. on 26.11.2010, prosecutrix and her mother were collecting firewood, when the juvenile appeared on that place and stated to her mother that the sister (namely, Rakhi) of the petitioner was suffering from some ailment and she has been calling the prosecutrix for the purpose of her service. The petitioner took the prosecutrix to the house of his friend wherein she was kept for about 14 days and she was subjected to sexual intercourse.

After completion of investigation, final police report under Section 173 Cr.P.C was submitted. It was found that the petitioner was juvenile, therefore, proceedings against him were initiated by the Principal Magistrate, Juvenile Justice Board, Sonapat. Prosecution has examined 16 witnesses. On conclusion of trial, statement of the petitioner was recorded under the provisions of Section 313 Cr.P.C and all the incriminative evidence appeared against him during the trial was put to him, the contents of which he had denied and took the plea of innocence and false implication. However, he did not examine any witness in the defence evidence.

On appreciation of evidence, the juvenile was convicted and sentenced as under:-

Office	Sentence
362 of IPC	Convict was ordered to be sent to Observation Home, Ambala for a period of six months.
366-A of IPC	Convict was ordered to be sent to Observation Home, Ambala for a period of one year.
376 of IPC	Convict was ordered to be sent to Observation Home, Ambala for a period of three years.

The petitioner preferred an appeal which was dismissed by the First Appellate Court vide impugned order dated 07.06.2016.

gone through the record.

Learned counsel for the petitioner submitted that age of the prosecutrix is not properly proved; that the underwear of the petitioner was taken into possession but no semen was detected thereon and the Juvenile Justice Board as well as the First Appellate Court failed to appreciate the evidence. He has further submitted that petitioner being a juvenile be given the benefit of probation.

On the other hand, learned State counsel submitted that the age of the prosecutrix is proved beyond doubt and apart from it, the same has never been challenged by the petitioner during the trial. According to him, the prosecution evidence is reliable, without any blemish and it inspires confidence.

This Court has critically examined the evidence and also considered the rival contentions.

So far as the age of the prosecutrix is concerned, this fact is not in dispute. The certificate of her age Ex.PB shows that her date of birth is 28.02.1995. The prosecution has produced 2 witnesses who produced the school record. The school certificate has been prepared in discharge of the official duties by public servant and the school certificate is, thus, very much admissible into evidence. PW-2 Balraj Singh, Principal of Government Senior Secondary School, Chirana had testified that as per the school record, the date of birth of prosecutrix is 20.2.1995. Prosecutrix was admitted in said school on the basis of 8th standard examination certificate. The prosecution also examined Smt. Nirmala Devi who testified that the prosecutrix was admitted in that school on the basis of primary school

Both these witnesses are the public servants and they made the entry of the birth of the prosecutrix in the school record in performance/discharge of their official duty. Prosecutrix was admitted in Government Senior Secondary School, Chirana much earlier to the date of occurrence. Thus, this Court is satisfied that the date of birth of the prosecutrix is 20.2.1995 and she was minor at the time of occurrence.

Now coming to the commission of rape upon the prosecutrix. Admittedly she was minor when she was sexually assaulted. She was taken by the petitioner with him on the pretext that she has been called by sister of petitioner-Rakhi as she (said Rakhi) was suffering from some ailment. When the prosecutrix was brought to that place, she found that Rakhi was hale and hearty. The prosecutrix was taken to the house of friend of the accused where she was kept for about 14 days and was subjected to rape 4 to 5 times. She has been subjected to cross-examination. She was cross-examined on behalf of the petitioner, but nothing elicited from the cross-examination, that her version was in any way doubtful or not acceptable. Woman and moreso a young unmarried girl will not put her reputation on peril by alleging falsely about forcible sexual assault as the society in which she was staying is still conservative. Her evidence is supported by medical evidence. PW-11 Dr. Shivani Mann has categorically stated that in her opinion, the possibility of sexual assault upon the prosecutrix cannot be ruled out. At the time of medico-legal examination, her underwear was taken into possession on 9.12.2010 which was sent to Forensic Science Laboratory and it was observed that it contained human semen vide report Ex. PX. Thus, the version of the prosecutrix is fully proved by the medical evidence.

The petitioner was also medically examined and it has been reported that he was capable to perform sexual intercourse. This further strengthens the prosecution case.

Learned counsel for the petitioner submitted that there was no injury external or internal on any part of the body of the victim and it negates the plea of sexual intercourse. This Court has considered this contention but it carries no weight. The victim was kept in the illegal custody of the petitioner for about 14 days i.e. 26.11.2010 to 09.12.2010. It shall not be appropriate to expect or presume that in all cases of sexual intercourse with a woman against her own will or without her consent, there would be some injury on the external or internal part of the body of the victim. In these circumstances of the case, and in the absence of any injury on the body of the prosecutrix, ipso facto, is not sufficient to discredit her evidence. On the independent analysis of the evidence, this Court is of the view that prosecution evidence is reliable and it is without any blemish and inspires confidence. Thus, it is held that the findings of the Juvenile Justice Board as well as the First Appellate Court are based upon proper appreciation of evidence and they do not call for interference.

In view of the above, this Court is of the view that this revision petition is devoid of merit and deserves dismissal.

Dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

July 10, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.