

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-1665-2016

Judgement reserved on : 11.05.2022

Date of Decision: 02.06.2022

State of Haryana

--Petitioner

Versus

Virender Singh @ Goly

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. B.S. Virk, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

The State of Haryana has filed the present criminal writ petition impugning the order dated 5.2.2015 whereby the respondent-accused has been acquitted by the Principal Magistrate, Juvenile Justice Board, Kurukshetra.

As per facts of the case, the respondent-accused was prosecuted in case FIR No.342 dated 28.12.2011 registered under sections 376, 365, 452, 366 and 506 IPC at Police Station, Pehowa.

The victim had lodged the FIR on the allegations that on the intervening night of 27/28.12.2011 she was sleeping in a room of her house and at about 10.30 PM respondent-accused Virender Singh came on the roof and entered into her room and asked her to accompany him. He threatened her not to raise the noise otherwise she and her family members would be killed. She along with the accused came in the street situated in front of her house. She was forced to sit on the motorcycle and was taken to the shop of the respondent-accused situated at Court Chowk, Pehowa, where his mother was also present who closed the shutter of the shop from outside.

Thereafter, respondent-accused committed rape with her and she was

threatened not to disclose anything to anyone failing which her family would be eliminated. After committing rape she was shunted out from the shop. On returning back to home she disclosed the incident to her parents and resultantly the FIR was lodged. On conclusion of the investigation the challan was presented by the investigating agency. The juvenile was sent to the observation home. Both the sides produced their respective evidence before the Juvenile Justice Board and on conclusion of the same the accused was acquitted vide order dated 5.2.2015.

Learned State counsel has vehemently contended that the learned Juvenile Justice Board has misread the evidence produced by the prosecution. It has been submitted that the petitioner-State had already assailed the order dated 26.3.2013 declaring the respondent-accused to be a juvenile. It has been submitted that the victim was 15 ½ years of age at the time of occurrence and hence her evidence could not be ignored. He submits that the prosecution witnesses i.e. PW-3 Kajal, PW-5 Amarjit Singh and PW-6 Saroj have fully supported the prosecution version, whereas the learned Juvenile Justice Board has failed to appreciate the same judiciously and thus drawn a wrong conclusion in acquitting the respondent-accused. State counsel submits that the impugned order dated 5.2.2015 deserves to be set aside and the respondent-accused deserves to be convicted for the offence committed by him.

I have heard learned State counsel at length and have gone through the record carefully.

From the perusal of the record, it is apparent that the objection was taken by the respondent-accused that PW-1 to PW-12 were examined before framing of the charges and after framing of the charge only two

witnesses i.e. PW-13 Dr. Charu and PW-14 SI Phool Singh were examined.

It was contended that as the majority of the witnesses had been examined before framing of charge, thus, their depositions could not be taken into consideration, however, the same was repelled by learned Juvenile Justice Board finding no irregularity in view of Section 251 Cr.P.C. It was further observed that no prejudice had been caused to the accused for the same. Proceedings under the Act before the Juvenile Justice Board were of a summons trial. The learned State counsel argued that the victim was a minor and on the date of the occurrence i.e. 27/28.12.2011 the accused entered her home in the night and forcibly took her on motorcycle and thereafter committed rape on her. The victim was examined as PW-3. A close scrutiny of the deposition of the victim would show that at the time of occurrence she was sleeping in her home along with her family members. The accused allegedly entered home and by threatening her took her out of the home and forcibly made her to sit on his motorcycle. Thereafter she was taken to his shop, where she was allegedly raped. The forcible kidnapping of the victim while she was sleeping along with other family members and they were not even knowing the same is totally an unnatural and improbable conduct which cannot be accepted. There are material contradictions in the depositions made before the Juvenile Justice Board regarding the place of occurrence and the site plan i.e. Ex. PW-7/B. The father of the victim was examined as PW-5, who deposed that the victim was given a mobile by her mother. However, the victim deposed that the mobile was never given to her. The place of occurrence i.e. the shop of the accused is situated in a public place, however, as per the deposition of the victim she was forcibly taken from her home to the shop by forcibly making her to sit on the

motorcycle of the accused is also improbable as there was strong possibility of the family members coming to know of the same. Besides this, the ocular version is not even medically corroborated beyond reasonable doubt.

This Court vide order of even date passed in CRR-2851-2013 has upheld the findings declaring the respondent-accused a juvenile. As per statutory provisions the Legislature has already made provisions restricting the challenge of acquittal of the accused further once the juvenile is acquitted by the Juvenile Justice Board. As per the settled principle of law the appeal against the acquittal and that against the conviction rests upon two different pedestals. Once the accused is acquitted there lies double the presumption of innocence in his favour. The Higher Court cannot intervene in the case of acquittal in a cavalier manner. The interference can be in a situation when there are perversities in the findings arrived at by the Trial Court. If there are two views possible then the one favouring the accused should be adopted.

Keeping in view the overall facts and circumstances of the case and evidence adduced on record on the anvil of the law settled, this Court finds no infirmity in the conclusion arrived at by the learned Juvenile Justice Board, Kurukshetra in acquitting the accused and hence the petition being devoid of merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

02.06.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No