

CRR-3891-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3891-2018

Reserved on:- 10.05.2023

Pronounced on:- 24.05.2023

Gurpreet Singh alias Sheru

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Gursharan Singh, Advocate
for the petitioner.

Mr. Kunwarbir Singh, Assistant A.G. Punjab.

Mr. Navjeet Sodhi, Advocate
for the complainant.

AMARJOT BHATTI, J.

1. Gurpreet Singh alias Sheru has filed revision against the impugned judgment dated 24.09.2018 passed by learned Additional Sessions Judge, Gurdaspur, whereby the criminal appeal filed under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against judgment of conviction and order of sentence/detention dated 13.10.2017 passed by Principal Magistrate, Juvenile Justice Board, Gurdaspur pertaining to FIR No. 27 dated 22.02.2013 under Section 354 of Indian Penal Code read with Section 5 of Protection of Children from Sexual Offences Act, 2012 of Police Station Behrampur, has been dismissed.

2. The brief facts of the case are that present FIR has been registered on the statement of complainant Amrik Singh who stated that he

is an agriculturist by profession, having two sons. One of his son Satnam Singh is serving in Army and his family was staying with the complainant. Satnam Singh is having a daughter age about 3 years i.e. the victim. On 31.01.2013 at about 10:30 A.M., the wife of the complainant namely Balwinder Kaur came out in the street to buy vegetables and the minor child i.e. the victim followed her. After buying vegetables, his wife Balwinder Kaur went inside the house but the minor child did not come inside the house. After some time Gursimran Kaur (mother of the minor child) noticed that her daughter was not in the house, therefore, she went out in search of her daughter. When she reached near the house of Sobha Singh, she called out her daughter and she noticed that her minor daughter came out from the house of Juvenile in conflict with law Gurpreet Singh and she was crying. Gursimran Kaur brought back her daughter and inquired from her. The minor victim disclosed that the Juvenile in conflict with law Gurpreet Singh had taken her in the house and she was sexually assaulted. Gursimran Kaur disclosed this fact to her mother-in-law Balwinder Kaur and she further disclosed about this occurrence to him. The complainant approached the respectables of the village but the matter could not be settled and thereafter, the matter was reported to the police. With these allegations the present FIR was registered. The investigation was carried out. The Juvenile in conflict with law was joined in the investigation on 21.06.2013. After completion of investigation, the challan was presented before Juvenile Justice Board, Gurdaspur.

3. On the appearance of Juvenile in conflict with law, initially notice dated 30.10.2013 was served upon him under Section 354-A of Indian Penal Code and under Section 5, 6 and 8 of Protection of Children

from Sexual Offences Act, 2012 to which the Juvenile in conflict with law pleaded not guilty and claimed enquiry. During the enquiry, amended notice dated 04.11.2015 was served upon him under Section 354 of Indian Penal Code and under Section 8 of Protection of Children from Sexual Offences Act, 2012 to which he pleaded not guilty and claimed enquiry.

4. In order to prove the facts of the case, the prosecution examined Amrik Singh, complainant PW-1, Gursimran Kaur PW-2, victim PW-3, Varun Kumar PW-4, ASI Surjit Raj PW-5 and ASI Vipin Kumar PW-6. Thereafter, the evidence of prosecution was closed by order of Principal Magistrate, Juvenile Justice Board, Gurdaspur vide order dated 28.01.2015.

5. The statement of Juvenile in conflict with law was recorded under Section 313 of Cr.P.C. to which he pleaded innocence and false implication.

6. The Juvenile in conflict with law examined Dial Singh DW-1 in defence and thereafter, closed his evidence.

7. After hearing arguments advanced by learned Assistant Public Prosecutor as well as learned counsel representing the Juvenile in conflict with law, the Juvenile in conflict with law was found guilty under Section 354-A of Indian Penal Code read with Section 8 of Protection of Children from Sexual Offences Act, 2012 vide judgment dated 04.11.2015 and he was sentenced with the direction to serve in Civil Hospital, Gurdaspur for 08 months from 03:00 P.M. to 08:00 P.M. under the supervision of the Incharge, Civil Hospital, Gurdaspur vide order of conviction dated 04.11.2015 passed by learned Principal Magistrate, Juvenile Justice Board, Gurdaspur and vide judgment dated 18.09.2017, the case was remanded

back to the Juvenile Justice Board with the direction for fresh decision after hearing the parties on evidence already led by them and to pass judgment as per the provisions of Section 5(3) of the aforesaid act.

Thereafter, the arguments were again heard by the Principal Magistrate, Juvenile Justice Board, Gurdaspur and the Juvenile in conflict with law was held guilty under Section 354 of Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 vide judgment dated 13.10.2017 and he was sentenced as under :-

Name of the juvenile	Under Section	Period of detention	Fine	In default of making fine the detention of the period of
Gurpreet Singh	354 I.P.C.	One year	-	-
	8 of the Protection of Children from Sexual Offences Act, 2012	One year	-	-

Feeling aggrieved of the aforesaid judgment, the Juvenile in conflict with law preferred an appeal bearing Criminal Appeal No. 115 of 13.11.2017, CIS No. CRA-390-2017, which was declined vide impugned judgment dated 24.09.2018 vide which it was held that the appellant/Juvenile in conflict with law has attained age of 22 years, therefore, he was detained in Safety Home. He was ordered to be taken into custody to serve the sentence awarded by Juvenile Justice Board, Gurdaspur. Feeling aggrieved of this judgment, present revision has been preferred.

8. I have heard the arguments advanced by learned counsel for the petitioner, learned counsel representing the State and learned counsel for the complainant and have gone through the record carefully.

9. Learned counsel for the petitioner has argued this revision only on the order of sentence/detention. No arguments were advanced on the merits of the case. It is argued that as per the custody certificate, the petitioner has already undergone detention for the period of 07 months 10 days alongwith remission of 08 days, therefore, the total detention period is of 07 months 18 days. It was prayed that the petitioner has already undergone long period of detention. He is not involved in any other case. Therefore, taking a lenient view, the sentence imposed upon him may be modified to the one of the period already undergone.

10. On the other hand, learned counsel for the respondent/complainant opposed the arguments advanced by learned counsel for the petitioner by referring to the provisions of Section 8 of the Protection of Children from Sexual Offences Act, 2012. It is pointed out that as per Section 8 of the aforesaid act, the accused shall be punished with imprisonment of either description for a period which shall not be less than three years but may extend to five years and shall also be liable to fine. However, the learned Principal Magistrate, Juvenile Justice Board has failed to consider the provisions of Section 8 of the Protection of Children from Sexual Offences Act, 2012 and has granted lesser punishment. Therefore, the case should be remanded back to the Juvenile Justice Board for passing appropriate order of detention as provided under Section 8 of POCSO Act.

It is further argued that the petitioner had committed serious offence. He had sexually abused the victim who was less than 04 years of age. Therefore, considering the gravity of offence, he does not deserve lenient view. The State counsel has also argued on the same line.

11. I have considered the arguments advanced before me. I have also gone through the record carefully. In this case, the petitioner has not argued on the judgment of conviction passed against him under Section 354 of Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012. He has only argued on the quantum of sentence/detention passed against the petitioner. In the case in hand, the FIR was registered on the statement of Amrik Singh who stated that on 31.01.2013 at about 10:30 A.M., his wife Balwinder Kaur came out in the street to purchase vegetables. His grand daughter, the minor child (victim) came out after her grand mother. His wife returned back in the house but the minor child did not come back in the house. After some time, the mother of minor child namely Gursimran Kaur came out to find out her daughter. She started calling her and the minor child came out crying from the house of Juvenile in conflict with law. The minor child explained to her mother that she was sexually abused by the Juvenile in conflict with law. These facts were told by the mother of minor child to her mother-in-law Balwinder Kaur and she further disclosed about this occurrence to the complainant. There was effort to settle the dispute but it failed and ultimately the report was lodged with the police. The aforesaid facts are duly proved on record in the testimony of complainant Amrik Singh PW1 and Gursimran Kaur, mother of the minor victim as PW2. The statement of victim was also recorded as PW3 where she had confirmed that she was sexually abused by the Juvenile in conflict with law. The date of birth of the victim is proved by examining Varun Kumar PW4. The photocopy of the relevant entry of the register is Ex. PW4/A, according to which the minor victim was born on 31.10.2009. As per this record, the victim was

about 03 years 03 months old at the time of said occurrence. The entire investigation is proved on record by ASI Surjit Raj PW5 and ASI Vipan Kumar PW6. The learned counsel representing the Juvenile in conflict with law examined Dial Singh DW1 in defence. The Juvenile Justice Board ultimately found the present petitioner guilty under Section 354 of Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012 and he was ordered to be kept under detention for a period of one year under Section 354 of Indian Penal Code and one year under Section 8 of Protection of Children from Sexual Offences Act, 2012 (both sentences were ordered to run concurrently) by passing detailed judgment and order of detention dated 13.10.2017. Admittedly, the appeal preferred by the Juvenile in conflict with law was also dismissed vide judgment dated 24.09.2018.

12. I have considered the quantum of detention period awarded by the Juvenile Justice Board vide judgment and order of sentence/detention dated 13.10.2017. In the case in hand, the petitioner at the time of commission of offence was a juvenile. As per the Matriculation Certificate taken into police possession vide recovery memo Ex. PW6/C, his date of birth is 02.12.1996, therefore, at the time of commission of said offence, he was 16 years 02 months old. Accordingly, the challan was presented before Juvenile Justice Board and he was tried in this case as per the procedure established under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. Section 18 of Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the orders which can be passed regarding the child found to be in conflict with law. As per this section, the offences can be categorized as petty offences, serious offences

or heinous offences. As per Section 18 (1) of the aforesaid act, he can be sent to a Special Home or a Place of Safety for any period not exceeding three years. Since, the present petitioner was a juvenile, therefore, the order of sentence/detention passed by Juvenile Justice Board vide order dated 13.10.2017 does not require any interference. The arguments advanced by learned counsel for the petitioner to remand back the case for imposing lesser period of detention does not hold any ground. The petitioner was a juvenile, therefore, his case is to be dealt with under the special provisions as provided under the Juvenile Justice (Care and Protection of Children) Act, 2015.

13. In the case in hand, the learned counsel for the petitioner has prayed that the petitioner has already remained under actual detention for a period of 07 months 10 days, therefore, a lenient view may be taken towards him. I have considered this aspect of the present case. In the case in hand, the unfortunate occurrence took place on 31.01.2013. The FIR was registered on 22.02.2013. The present petitioner faced inquiry in this case and ultimately, the case was decided by the Juvenile Justice Board, Gurdaspur vide judgment dated 04.11.2015. Again on the appeal preferred by the Juvenile in conflict with law, the case was remanded back vide judgment dated 18.09.2017 and ultimately, he was again found guilty under Section 354 of Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012 vide judgment and order of detention dated 13.10.2017. The present petitioner again filed an appeal which was ultimately dismissed vide judgment dated 24.09.2018. The present revision was filed on 27.11.2018. Therefore, the petitioner is facing the agony of prolonged inquiry for the last more than 10 years. As

per the custody certificate, he has remained under actual detention for a period of 07 months and 10 days and including remission, total period of 07 months and 18 days. As per the custody certificate, during this period he is not found involved in any other criminal case. Now, the present petitioner is about 26 and a half years of age. Therefore, having regards to the period of detention, the age of present petitioner and the prolonged trial/enquiry he has already faced, considering these facts by maintaining the judgment of conviction of the petitioner Gurpreet Singh alias Sheru, the period of detention/sentence imposed upon him stands modified to the one of the period he has already undergone.

The revision is accordingly, disposed of.

Pending application(s) if any, also stands disposed of.

24.05.2023
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(AMARJOT BHATTI)
JUDGE

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