

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

CRR No.4541 of 2016

Date of decision: 2nd April, 2019

Gurbachan Lal @ Sabhi

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Rakeshinder S. Sidhu, Asstt. AG, Punjab
for the respondent/State.

Mr. Rajiv Joshi, Advocate for the complainant.

FATEH DEEP SINGH, J.

This matter has a chequered history. It is vide judgment and order dated 03.09.2012 passed by the Juvenile Justice Board, Jalandhar, the petitioner, who happens to be a juvenile, was convicted under Section 376 IPC and was sent to Special Home (Observation Home) for a period of two years with a fine of Rs.2000/-. It is thereafter, upon his appeal before the appellate authority vide judgment dated 01.05.2013 the Court of learned Additional Sessions Judge, Jalandhar set aside the impugned findings of the Board and remitted the case to pass fresh order keeping in view the provisions enshrined under Section 5 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short, 'the Act'). It is

thereafter, the matter was again taken up before the Principal Magistrate, Juvenile Justice Board, Jalandhar and through its decision dated 14.06.2013, the juvenile (who by that time was found to have attained majority) was held guilty of committing offence punishable under Section 376 IPC and was sent to the Special Home for a period of two years besides ordering payment of fine of Rs.10,000/- as compensation to the victim. Upon appeal, the Court of Additional Sessions Judge, Jalandhar through impugned findings dated 15.11.2016 upheld the findings of the trial Court of learned Principal Magistrate, Juvenile Justice Board, Jalandhar and dismissed the appeal. That is how the present revision has sought to be filed by the unsuccessful revisionist.

Upon hearing Mr. Sandeep Arora, Advocate for the accused petitioner, Mr. Rakeshinder Singh Sidhu, Asstt. Advocate General, Punjab representing the respondent/State, Mr. Rajiv Joshi, Advocate on behalf of the complainant and on perusal of the records.

The brief allegations of the prosecution have come about by a complaint made by mother of a minor girl, then aged around three-and-a-half years, before Human Rights Commission, Punjab. In her complaint, the complainant alleged that the accused, who happens to be from their neighbourhood, enticed and took away the victim to his home and violated her. The girl on her return, wept and confided in the complainant

mother and detailed how the incident had unfolded, leading to registration of the present case.

The prosecution at the trial examined the complainant mother Usha Rani as PW1, HC Darshan Lal PW2, the victim as PW3, Mohinder Pal Singh SP(D) as PW4, Dr.Damanjit Kaur as PW5 and thereafter the prosecution evidence was closed. The accused in his stand under Section 313 Cr.P.C. denied the allegations and set up the plea of innocence. In his defence, the revisionist examined Jagdish Singh Additional Ahlmad of the Court of learned Judicial Magistrate 1st Class, Jalandhar as DW1 and thereafter the evidence was closed and that is how the impugned findings have come about.

As has been argued, learned counsel for the petitioner does not dispute the fact that the victim at the time of this occurrence was a small kid aged between 3½ to 4 years. The victim has testified as PW3 and serialized the events and the manner in which she was violated by the accused after bolting the door. Corroboration to her statement has come about from the testimony of her mother as PW1. The learned counsel for the revisionist could not convince this Court any illegality or irregularity which could be pointed out in the testimony of these witnesses which could be of any solace to the revisionist. Furthermore, in the light of arguments, the most material witness is PW5 Dr.Damanjit Kaur, Medical

Officer, Civil Hospital, who medico-legally examined the victim and had detailed that though there was rupturing of the hymen but no definite opinion of allegation of rape could be given. Since the ocular version of the victim corroborated by her mother is in line with the medical opinion that has come about, mere assertion of the learned counsel for the petitioner that there is no mark of external injury does not suffice to hold good the arguments, as it is not an universal rule that in such a situation there ought to be injuries on the genitalia when the accused himself is a juvenile and the victim too is a small kid. Even otherwise, it is well settled law that medical corroboration need not be there in such cases and mere oral testimony at times would be sufficient enough to uphold the allegations, if on the face of it they seem to be probable and worth credence.

The next line of submissions that is sought to be raised is that the Court below has not correctly appreciated the delay that has taken place in the alleged occurrence and registration of the FIR. It needs to be clarified that mere delay cannot be construed to be fatal for the prosecution and rather as has been highlighted in the testimony of Usha Rani PW1, it was when she moved the Human Rights Commission and on the basis of its report Ex.PA, directions were issued and the police took its own time to hold inquiry and thereafter the FIR was got

registered, is in itself sufficient explanation for this delay that has been occasioned. Thus, this argument of the petitioner side falls to the ground under its own weight.

Furthermore, learned counsel for the revisionist has sought to highlight the complaint Ex.DX proved by DW1 Jagdish Singh Additional Ahlmad, however it has been clearly held by the Board in its findings that the complaint Ex.DX pertains to some other occurrence which has happened with the mother of the prosecutrix and cannot be correlated with the present occurrence. Even otherwise, when confronted with Ex.DX, the mother of the victim has categorically denied having ever made this complaint or that it bears her signatures, is thus another distressing feature for the defence. The Board while appreciating the evidence and so the learned first appellate Court has scanned the evidence, oral as well as documentary, proved on the record and have come to a totally correct finding and have rather appreciated that it was upon registration of the FIR after inordinate delay of two years by the police, would not give any positive sign in the Chemical Examiner's report. The Court is pained at the total insolence and arrogance of the police authorities in taking cognizance of the offence and it was after intervention of the Human Rights Commission, the matter has been probed, is in itself reflective of the fact as to the lethargy by the

prosecution agency in bringing about meaningful evidence and rather to the mind of this Court, every moment has been availed of in burying this episode for a motivated cause and which does not augurs well in the dispensation of justice. Mr. Sandeep Arora, learned counsel for the petitioner could not convince this Court how there has been illegality in the findings of the two courts below. The revision petition being hopelessly without merit, stands dismissed.

**(FATEH DEEP SINGH)
JUDGE**

April 2, 2019
rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

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