

Court No. - 31

Reserved "AFR"

Case :- CRIMINAL REVISION No. - 3 of 2018

**Revisionist :- Takla @ Dharmeshwar (Minor) Thru.
Mother Smt.Sushila Devi**

Opposite Party :- State Of U.P. & Anr.

**Counsel for Revisionist :- Amrendra Singh,
Armendra Pratap Singh**

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Mrs. Saroj Yadav,J.

1. This criminal revision has been preferred by the revisionist/juvenile Takla @ Dharmeshwar through his mother Smt. Sushila Devi, under Section 102 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (in short the "Act of 2015") against the judgement dated 28.11.2017 passed by learned Sessions Judge, Sitapur in Criminal Appeal No. 80 of 2017 as well as order dated 10.10.2017 passed by Principal Magistrate, Juvenile Justice Board, Sitapur in Case No. 60/2017 arising out of Crime No. 100/2017, under Section 376B Indian Penal Code (in short "I.P.C.") and Section 3/4 of The Protection of Children from Sexual Offences Act,

2012 (in short "POCSO Act"), Police Station Manpur, District Sitapur.

2. Brief facts necessary for disposal of this Criminal Revision are as follows:-

An F.I.R. bearing Case Crime No.100 of 2017 was registered against unknown persons on the basis of written complaint moved by the complainant Smt. Phoolmati narrating the facts that on 06.05.2017 at about 1 AM in the night, some dance function was going on in the marriage procession in front of house of the complainant. The grand-daughter of the complainant aged about 5 years went to watch the same. One unknown person came there and took her away near the pond situated in the village and committed rape on her. The investigation was made and during the course of investigation, the name of the revisionist and one other accused came into light. Subsequently, charge sheet was submitted in the Court. The Court concerned took cognizance of the matter. The revisionist claimed juvenility and he was declared juvenile by the Juvenile Justice Board, Sitapur vide

order dated 21.09.2017. Thereafter, the revisionist/juvenile moved bail application before the Juvenile Justice Board, Sitapur. That was rejected vide order dated 10.10.2017. Against that order an appeal was preferred under Section 101 of the Act of 2015 and appeal too was dismissed by the Appellate Court vide judgment and order dated 28.11.2017. Being aggrieved with the said order/judgment, the revisionist/juvenile preferred the present revision.

3. Heard Sri Shivendra Singh Rathore, learned counsel for the revisionist and Sri Dhananjay Kumar, learned A.G.A. appearing on behalf of the State respondent. None turned up on behalf of the opposite party no. 2 despite of service of notice.

4. Learned counsel for the revisionist/juvenile submitted that revisionist is in jail since last four years. He was declared juvenile by the Juvenile Justice Board, Sitapur vide order dated 21.09.2017. He was not named in the first information report. During the course of investigation, police implicated him on the basis of the statement made by the complainant,

wherein she stated before the Investigating Officer that one Lallu Ram and Ram Nath told her that they both saw that Daroga @ Surjeet took the victim away forcibly and Takla @ Dharmeshwar was also there. They both committed rape on the victim. He also submitted that the victim in her statement recorded under Section 164 Cr.P.C. has mentioned that she was picked up by Surjeet and Takla and Surjeet committed rape on her but she said nothing about the commission of rape by revisionist/juvenile-Takla. He further submitted that according to provisions of Section 18(1) (g) of the Act of 2015, the juvenile in conflict with law can be sent to special home for such a period not exceeding three years. In the present matter, even if it is presumed that juvenile has committed a crime, he cannot be kept in protection home for more than three years. The revisionist/juvenile already has spent about four years in judicial custody. He further submitted that the case of revisionist/juvenile does not fall under any of the exceptions provided under Section 12(1) of the Act of 2015. Learned Principal Magistrate, Juvenile

Justice Board and the Appellate Court both have wrongly concluded that the release of the juvenile will bring the juvenile into the contact of the unknown criminals and that will expose the juvenile to moral, physical and psychological danger and will defeat the ends of justice.

5. Learned A.G.A. countered the submissions made by the learned counsel for the revisionist and submitted that revisionist/juvenile committed rape on an innocent child aged about five years. Medical report of the victim shows brutality in committing the crime. Doctor has noted that " There are signs suggestive of recent use of force/forceful penetration of vagina/anus" so the revision of the juvenile should be dismissed.

6. Considered the rival submissions and perused the record.

7. It is undisputed that revisionist/juvenile is in judicial custody for a period of about four years. There is a report of Principal Magistrate, Juvenile Justice Board, Sitapur dated 15.07.2019 disclosing that the case of the juvenile has been transferred under Section

18(3) of the Act of 2015 to POCSO Court/Additional Sessions Judge, Court No. 8, Sitapur for trial. It means that the trial of the revisionist is being conducted as an adult. In such situation, the revisionist is not entitled for the benefit of provisions under Section 18(g) of the Act of 2015.

8. As per the report of District Probation Officer, Sitapur, the age of revisionist/ juvenile was found 17 years and 9 months. About four years have passed, since then, so the revisionist/juvenile now has turned major aged about 21 years and some months.

9. Considering the above facts and circumstances and the settled position of law as well as the statement made by the victim wherein she has stated that this revisionist/juvenile did not commit rape on her, the order of Juvenile Justice Board and the judgment of the appellate court are not sustainable. Therefore, it appears just to set aside the order passed by the Juvenile Justice Board and the judgement passed by the Appellate Court.

10. The revision is allowed. Impugned order dated 28.11.2017 passed by the Sessions Judge, Sitapur in Criminal Appeal No.80 of 2017 and order dated 10.10.2017 passed by Principal Magistrate, Juvenile Justice Board, Sitapur in Case No.60/2017 arising out of Crime No.100/2017, under Section 376-D I.P.C. and Section 3/4 of POCSO Act, Police Station Manpur, District Sitapur, are hereby set aside.

11. The **juvenile (Takla @ Dharmeshwar)** shall be released on bail in Case Crime No.100/2017 (supra). It is pertinent to mention here, since the revisionist has turned an adult and of age more than 21 years, he shall be released upon furnishing a personal bond himself and two sureties each of the like amount to the satisfaction of the trial Court concerned. Out of two sureties, one shall be mother/father or close relative of the revisionist, subject to following conditions :-

(i) The revisionist shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be

open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The revisionist shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the revisionist misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the revisionist fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The revisionist shall remain present in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty

of bail and proceed against him in accordance with law.

(v) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(vi) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vii) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 20.7.2021

Arun

(Saroj Yadav, J.)