



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.353 of 2024

(In the matter of an application under Section 401 read with Section 397 of the Code of Criminal Procedure).

Bibhu Prasad Behera *Petitioner (s)*

-versus-

State of Odisha *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Manas Kumar Chand, Adv.*

For Opposite Party (s) : *Mr. Ch. Satyajit Mishra, AGA*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-31.07.2024

DATE OF JUDGMENT: -06.09.2024

Dr. S.K. Panigrahi, J.

1. The Petitioner/ Child in Conflict with Law (CCL), in this CRLREV, has challenged the judgment dated 15.05.2024 passed by the learned Additional Sessions Judge-cum-Childrens' Court, Bhubaneswar in Criminal Appeal No.20 of 2024 affirming the judgment of conviction and order dated 17.02.2024 passed by the learned Juvenile Justice Board, Khurda in JGR Case No.33 of 2022 whereby he was found guilty and ordered the CCL to go to place of safety, Berhampur for a period of two years for the offence under Section 377 of the I.P.C. and two years for



the offence under Section 6 of the POCSO Act. It was further directed that the above period would run concurrently.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts necessary for disposal of this CRLREV are as follows:-

- (i) On 04.12.2022, the I.I.C. of Tangi P.S. received a written report filed by the informant Antara Behera S/o.-Makara Behera of Village Jayantapur, P.S.-Tangi, Dist.-Khordha alleging that on 03.12.2022 at about 4.00 P.M. his son Jiri @ Jit Behera aged about 4 years was playing at village Danda. At that time, one Bibhu Behera S/o Gopal Behera called him and took him to a lonely place and put her penis in his mouth. When his son cried, the CCL forcibly penetrated his penis in the Anus of his son. As a result of which, his son sustained bleeding injury on his anus.
- (ii) Thereafter, the son of the informant stated about the fact to him. Accordingly, the informant reported the matter before the I.I.C., Tangi P.S. The CCL threatened the victim Jit Behera to kill if he would disclose about the matter to his father and mother.
- (iii) On receipt of the report, the IIC, Tangi P.S. registered P.S. Case No.830 dated 04.12.2022 for commission of offences under Sections 377/506 of the I.P.C. read with Section 6 of POCSO Act, 2012 and directed the S.I. to conduct investigation of this case. During investigation, the I.O. examined the informant and other witnesses and recorded their statement under Section 161 of the Cr.P.C., visited the spot and prepared spot map, sent Medico Legal Examination requisition of the victim Jita @ Jit Behera to D.H.H., Khordha and C.C.L. Bibhu Behera



and received the Medico Legal Examination report from D.H.H., Khordha, seized admission register of Tarapi U.P. School from the Headmaster of Tarapi U.P. School, seized biological sample of both the victim and the CCL and sent to S.F.S.L. Rasulgarh, BBSR and prayed to record the statement of victim Jita @ Jit Behera, Jhina Behera and Antara Behera under Section 164 Cr.P.C.

- (iv) As there was prima facie case against the CCL, the I.O. submitted Charge Sheet for the offences under Sections 377/506 of the I.P.C. read with Section 6 of POCSO Act against the C.C.L. Bibhu Behera (14) S/o.- Gopal Behera Village- Jayantipur, P.S.-Tangi, Dist.-Khordha. For the aforementioned offences CCL faced inquiry in the board.
- (v) Defence took the plea of complete denial of the prosecution allegation and false implication.
- (vi) In order to substantiate the allegation, prosecution examined eleven numbers of witnesses in this case. P.W.1 is the informant (father of the victim), P.W.2 is the mother of the victim, P.W.3 is the victim himself, P.Ws. 5, 6 and 7 are the seizure witnesses, P.W.8 is the Medical Officer, P.W.11 is the Investigating Officer and P.Ws.4, 9 and 10 are the other prosecution witnesses. Prosecution also placed reliance on the documents marked as Exts.P-1 to P-18. Defence had neither examined any witness nor did produce any document on its behalf.
- (vii) On an appraisal of evidence on record, especially the evidence of the victim (P.W.3), the Juvenile Justice Board, Khurda vide judgment and order dated 17.02.2024 passed in JGR Case No.33 of 2022 found the CCL



guilty and ordered the CCL to go to place of safety, Berhampur as stated supra.

(viii) Being aggrieved by the judgment and order dated 17.02.2024 passed in JGR Case No.33 of 2022 by the Juvenile Justice Board, Khurda, the Petitioner/CCL preferred Criminal Appeal No.20 of 2024 before the learned Additional Sessions Judge-cum- Childrens' Court, Bhubaneswar. On reappraisal of the evidence on record, learned Additional Sessions Judge-cum- Childrens' Court, Bhubaneswar vide judgment dated 15.05.2024 dismissed the Criminal Appeal No.20 of 2024 filed by the Petitioner/ CCL confirming the judgment and order of the Juvenile Justice Board, Khurda. Hence, this CRLREV

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.
 - (i) The impugned judgment of detention and sentence passed by the trial court which was confirmed by the Appellate Court are erroneous and unsustainable in the law.
 - (ii) Neither the trial Court nor the Appellate Court have appreciated the available materials on record in its proper perspective and have lost their sight to the apparent material contradiction and legal infirmities appearing in this case. Therefore, the impugned judgments of detention passed by the courts below are not sustainable in law.
 - (iii) Admittedly, except the relation of the victim no other independent witnesses have been examined by the prosecution. Moreover, not a



single boy who is playing with the victim on the alleged date of the occurrence has been charge sheeted to be a witness of the prosecution to corroborate the alleged overt act of the Petitioner. That apart, there is no material contradiction between the evidence of the Prosecution Witnesses relating to involvement of the CCL and manner and place of occurrence. In fact, taking into consideration of all such aspects the learned Juvenile Justice Board as well as the Appellate Court ought to have extended the benefit of doubt in favour of the Petitioner/ CCL instead of passing such detention order in a mechanical manner.

- (iv) The prosecution has not come with a clean hand and deliberately made an attempt to develop the story of the alleged overt act by the CCL to the victim. The F.I.R. is the outcome of previous dispute between two family and to materialize their evil desire, such false case has been foisted against the CCL. Thus, on such ground the impugned orders require to be set aside by this Court.
- (v) The prosecution has not been able to prove the involvement of the Petitioner through cogent and convincing evidence. The Witnesses examined have also not specifically alleged anything against the Petitioner.
- (vi) The trial Court has imposed excessive period of detention both under I.P.C. as well as under POCSO Act without taking into consideration the fact that the Petitioner is a CCL having no adverse report. Under such circumstance, the impugned orders passed by both the courts below suffer from material contradictions, hence, deserve interference by this Court.



(vii) Therefore, he submitted that the impugned orders are liable to be set aside. Accordingly, he prays for allowing of this CRLREV.

III. SUBMISSION OF THE OPPOSITE PARTY/STATE:

4. On the contrary, learned counsel for the State earnestly made the following submissions in support of his contentions:

(i) Evidence of the victim and his parents and the evidence of the Medical Officer were sufficient to prove the case of the prosecution. Ample evidence was led by the prosecution that the CCL took the victim child and put penis in his mouth and anus and threatened him.

(ii) It is contended that during inquiry, the prosecution witnesses have been able to prove that the CCL has committed the crime against the victim. Therefore, the Juvenile Justice Board after taking into consideration of those evidences has rightly found the CCL guilty under Sections 377 of the I.P.C. and Section 6 of the POCSO Act. Moreover, on re-appraisal of evidence on record and placing reliance on material witnesses, the lower Appellate Court has rightly dismissed the appeal preferred by the CCL confirming the judgment and order passed by the trial court. Therefore, he prayed for dismissal of this Criminal Revision.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard learned counsel for the parties and gone through the findings recorded by both the courts below so also the materials placed on record.

6. It was submitted by the learned counsel for the Petitioner/ CCL that conviction of the Petitioner/ CCL is based on the evidence of the victim and his relation. It was contended that no other independent witnesses



have been examined by the prosecution, Moreover, not a single child who was playing with the victim on the alleged date of occurrence has been charge-sheeted to be a witness of prosecution to corroborate the alleged overt act of the Petitioner.

7. However, on a close scrutiny of the evidence it is found that, though evidence of P.W.3 (victim) is not corroborated by ocular testimony of any eye witness, evidence of P.W.3 by itself is free from any infirmity. He testified that he knew Champi Nani Pua and his name is Champi Nani Pua. On being asked what Champi Nani Pua did, he replied Champi Nani Pua inserted his penis into my mouth and also inserted his penis into my anus. The CCL committed this act at Tarini Temple. Then he ran to his house and stated to his mother that CCL penetrated his penis in his anus. On cross-examination, he stated that at that point in time no one was present. Champi Nani Pua forcibly took him away by dragging. He stated that previously he had visited with the CCL but the CCI had never done such act with him. The CCL had never shown his mobile to him. The CCL never scolded him.
8. The evidence of the victim is clear, cogent and trustworthy. In such circumstances, there is no infirmity in the impugned judgment and order of detention passed by the Juvenile Justice Board.
9. It appears that in this case, the Petitioner is a Child in Conflict with Law (CCL) without any adverse report. However, the Juvenile Justice Board considering the Social Investigation Report has come to the conclusion that there is no criminal antecedent against the CCL. In the Social Investigation Report, it has been mentioned that in an excitement and



sexual aggression, the CCL might have involved in the offence. However, considering the nature of offence, the Juvenile Justice Board observed that it would not be proper in the interest of justice so also in the interest of CCL to release the CCL under benevolent provision. Rather, it would be just and proper if he is kept at the place of safety. Accordingly, the Juvenile Justice Board had passed the impugned order.

10. Subsequently, the lower Appellate Court on re-appraisal of the evidences of the prosecution witnesses and after going through the evidence of victim (P.W.3), informant (P.W.1) so also the evidence of Medical Officer (P.W.8) and the Investigating Officer (P.W.11) and considering the fact of absence of any animosity which rules out the false implication against the CCL has rightly held that the judgment and order of detention passed by the Juvenile Justice Board does not suffer from any legal infirmity.
11. It appears that the occurrence took place on 04.12.2022 and since the date of occurrence, the Petitioner/ CCL is in custody for substantial period. Only three to four months only remain to be complete and undergo the sentence. Considering such circumstance, this Court is of the view that that it shall not be desirable to keep the Petitioner/ CCL in jail. Therefore, sentencing the Petitioner/ CCL to undergo the sentence already suffered by him shall serve the ends of justice.
12. Accordingly, while dismissing this CRLREV and confirming the order of detention passed by the Juvenile Justice Board and the judgment of the Appellate Court, the order of detention is modified, and the



Petitioner/ CCL is directed to go to the place of safety, Berhampur for a period already spent by him in the place of safety.

(Dr. S.K. Panigrahi)

Judge

*Orissa High Court, Cuttack,
Dated the 6th Sept. , 2024/ B. Jhankar*