

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3188-SB of 2013(O&M)
Date of Decision :28.01.2015

DeepakAppellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sumit Sangwan , Advocate
for the appellant.

Mr.Raj Kumar Makkad, DAG, Haryana.

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the appellant against his conviction under Sections 377, 506 IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012 whereby he was sentenced to undergo imprisonment here as under:-

Sr.No.	Under Section	Sentence	In default
1.	377 IPC	7 years R.I. with a fine of Rs. 1000/-.	R.I.for one month
2.	506 IPC	1 year R.I. with a fine of Rs. 200/-.	R.I.for 7 days
3.	4 of the Prevention of Children from Sexual Offences Act	7 years R.I. with a fine of Rs. 1000/-.	R.I. For one month

All the sentences were ordered to run concurrently.

Briefly stated the case of the prosecution is that on 7.4.2013 complainant Rohtash Singh was taking rest on a cot lying in front of his house. His son Yashpal, 16 years of age and student of 9th standard, was standing near the house of Deepak i.e. accused-appellant. After some time not seeing his son, he searched for him but could not get any clue. At about 5.00 p.m. his son came to him and narrated that Deepak took him to his house and committed carnal intercourse with him and also threatened him with dire consequences. The complainant reported the matter to the police on which a formal FIR was registered. Investigative machinery swung into motion and after completion of usual formalities, challan was filed against the accused-appellant. He was charged for the commission of offence under Sections 377, 506 IPC and Section 4 of the Protection of Children from Sexual Offence Act, 2012 to which he did not plead guilty and claimed trial.

In order to prove its case the prosecution examined as many as eight witnesses in evidence and closed the same. The accused-appellant was examined under Section 313 Cr.P.C. wherein he denied the prosecution allegations and pleaded false implication.

After hearing arguments from both the sides, the trial Court, after taking into consideration the testimony of the complainant(PW5), the victim(PW4) and the doctor(PW1) convicted the accused-appellant in the manner indicated above. Now he has filed the present appeal.

The first argument raised by learned counsel for the appellant is that there are discrepancies in the statements of the prosecution witnesses which go to the root of prosecution case. The said discrepancies pointed out by him are regarding the place of occurrence and time to approach the police etc.etc. The trial Court has dealt with the aforesaid discrepancies

threadbare and I do not feel that there is any scope of interference by this Court.

Another argument raised by learned counsel for the appellant is that the trial Court has wrongly relied on the statement of the doctor (PW1) who had just given his opinion that there was nothing to suggest that anal intercourse was performed and the same is in the following terms:-

“..... After thorough examination of anal region there is no sign of external injury, no abrasion, no tear, no laceration, tone of anal sphincter is adequate.

Opinion: In my opinion was that there is nothing to suggest that anal intercourse was performed.”

However, learned DAG has argued that the doctor(PW1) has also opined in his cross-examination that there may be possibility of anal intercourse and this possibility cannot be ruled out. Countering this learned counsel has argued that if there had been an act of anal intercourse there must have been some abrasions or some laceration, tear etc. but no such sign was detected by the doctor who examined the victim. In support of his argument he has referred to Modi's Medical Jurisprudence and Toxicology(Twenty-third Edition) which states that if a passive agent is not accustomed to sodomy, abrasions on the skin near the anus is likely to appear and lesions will be most marked in children while they may be almost absent in adults, when there is no resistance to the anal coitus. Galster's Medical Jurisprudence and Toxicology say that lesions like recent lacerations, bruising, inflammation of the mucous membrane could be notice in passive agent. As per Modi's Medical Jurisprudence and Toxicology (Twenty-third Edition), the following signs may be discovered if the boy(passive agent) i.e. not accustomed to sodomy:-

1. Abrasions on the skin near the anus with pain in walking and on defecation, as well as, during examination. These injuries are extensive and well defined in cases where there is a great

disproportion in size between the anal orifice of the victim and the virile member of the accused. Hence, lesions will be most marked in children, while they may be almost absent in adults when there is no resistance to the anal coitus. These injuries, if slight, heal very rapidly in two or three days. In most of the cases brought before Modi, he had seen superficial abrasions, varying from 1/6" to 1" x 1/6" to 1/4", external to the sphincter ani. In some cases, there may be bruising of the parts round about the anus and the abrasions may extend into the anus beyond its sphincter.

ii) Owing to the strong contraction of the sphincter ani, the penis rarely penetrates beyond an inch, and consequently, the laceration produced on the mucous membrane within the anus with more or less effusion of blood is usually triangular in nature, having its base at the anus and the sides extending vertically inwards into the rectum. Modi had found lacerations internal to the sphincter ani in several cases. These signs may not be present in cases where the active agent has used lubricants or/and has introduced his penis slowly and carefully without using force into the anus of the passive agent who is a consenting party.

iii) Blood may be found around the anus, on the perineum or thighs, and also on the clothes

iv) Semen may be found in or at the anus, on the perineum, or on the garments of the boy too young to have seminal emissions. Swabs from inside and around the anus must be taken and examined microscopically.

v) Signs of a struggle, such as bruises, and scratches, on his person, if he is a grown-up boy, and if he is not a consenting party.

vi) Lubricant round about the anus or on garments or recovered by swabs from the rectum also constitutes strong evidence of the perpetration of the crime.....”

As per learned counsel none of the above mentioned signs were found on the body of the victim which do indicate that no such offence was committed by the appellant with him. Learned DAG has countered this argument by stating that there is consistency in the statement of the complainant and the victim and the same is corroborated by the testimony of

the doctor who has also deposed that there may be possibility of anal intercourse and that possibility cannot be ruled out. He has further argued that ocular testimony coupled with medical opinion must prevail and that is so done by the trial Court.

After carefully going through the report of the doctor and the above mentioned description of signs on the body of a passive agent(such as the victim as per prosecution version) I am also of the opinion that the absence of any mark of injury or abrasion or laceration on the body of the boy does cast a doubt on the story of the prosecution.

Learned counsel for the appellant has relied upon **The State of Rajasthan v. Rambabu** reported as 2009(2) RLW 1645 which was also a case of anal intercourse and where the prosecution case was that coitus through anus was complete but the medical officer did not find any mark of injury on the anus of the boy nor any other symptoms of having carnal intercourse having been committed. In that case the Rajasthan High Court had upheld the acquittal of the accused stating that it is not safe to convict the accused unless the complainant's or victim's evidence is corroborated in material particulars implicating the accused since there was no other evidence except the uncorroborated statements of both of them.

Countering this argument learned DAG has argued that the offences like the present one are committed secretly and not in public so there may not be any question of corroboration from outside. He has further argued that no boy would like to lower his image in the society by levelling such disgraceful allegations involving himself.

I do agree with the learned DAG but this fact can also not be ignored that no one has seen the accused-appellant with the victim or taking him along with him. In such types of cases where there is no corroboration

from outside it becomes very difficult for the Court to come to a concrete conclusion that the offence was indeed committed. Moreover the facts in the case of The State of Rajasthan v. Rambabu(supra) are similar to the facts of the present case and I am also of the opinion that it would not be safe to convict the appellant on the uncorroborated testimony of the complainant and the victim and the contradictory opinions given by the doctor. Therefore, I am of the opinion that benefit of doubt must go to the accused-appellant.

Resultantly the appeal is allowed. The judgment of conviction and order of sentence are set aside. The accused-appellant is acquitted of the charges framed against him. He be released forthwith if not required in any other case.

(AJAY TEWARI)
JUDGE

January 28, 2015
sunita