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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-567-2007
Date of Decision : November 21, 2016

Vinod Petitioner

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present Mr. Sushil Gautam , Advocate,
for the petitioner.

Mr. Munish Dev Sharma, AAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present revision is directed against the judgment of conviction and order of sentence dated 05.09.2006 passed by learned Presiding Officer, Special Environment Court, Faridabad, whereby the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
Section 377 IPC	to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.2000/-	To further undergo RI for one month.

2. The appeal filed by the petitioner was dismissed by learned Additional Sessions Judge, Faridabad, vide judgment dated 13.03.2007 and

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as such, the present revision petition before this Court.

3. Relevant facts for the purpose of decision of this revision petition; that matter was reported to the police that on 17.1.1997, at about 3.30 PM, Budh Ram son of Ram Chander sent his sons Kishan Lal and Dharmender [victim], aged about 6 years, to look after the wheat in the fields. At about 4.30 PM, complainant Budh Ram along with his brother, Sohan Pal was going to the fields and observed that his son Kishan Lal was rushing towards them from the fields and told that one person had taken Dharmender to the sugarcane fields. The complainant and his brother rushed towards the sugarcane fields and found that one person, namely, Vinod [present petitioner] was doing carnal intercourse with his son, Dharmender against his wishes and when he noticed the complainant and his brother, he ran away from the fields. The complainant and his brother lifted their son Dharmender who was bleeding and was lying unconscious. As such, the matter was reported to the police, on the basis of which FIR Ex PW-9/A was registered.

4. During investigation, police inspected the spot. The victim was medico-legally examined. Accused was also medico-legally examined. Police took into possession the underwear of petitioner [Vinod] and obtained FSL report. Statement of prosecution witnesses were recorded. Accused was arrested and after completion of investigation, the police presented the challan.

5. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused under Section 377

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IPC, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, held the appellant guilty and convicted him for commission of offence under Section 377 IPC and sentenced him on 05.09.2006.

6. Learned counsel for the petitioner contended that learned trial Judge has ignored the material aspects of the case. First of all, the injuries on the body of victim, Dharmender, who was about 6 years of age, do not suggest act of 'sodomy'. More so, as per report of FSL, no semen was detected on the underwear of the accused. There was no injury on other parts of the victim though, the occurrence had taken place in the sugarcane fields. More so, learned trial Judge has completely ignored the defence version by way of statement of DW-1, Yaspal, Information Assistant, CHC, Korali so as to establish that the accused was admitted at a distance of 45 Kms., from the spot on the date of occurrence. PW-6, Dr. S.C.Bhagat, who had medico-legally examined Vinod, did not find any injury on the person of the accused.

7. Learned State counsel while arguing on this point took the plea that the prosecution case has been duly proved on the basis of statement of complainant, Budh Ram and the eye-witness, Sohan Pal, who had seen the alleged occurrence while accused was committing the offence of 'sodomy' by way of carnal intercourse with a child of six years. The ocular testimony is duly supported and corroborated by medical evidence. The matter was reported to the police immediately. The plea of *alibi* has been rightly

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negated by the trial Court as the same has been proved to be false version. More so, both the Courts below have already considered and appreciated the entire material and evidence available on the file and there are no grounds to set-aside the said findings by way of present revision petition and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the prosecution case is duly proved on the file on the basis of statement of complainant – Budh Ram and eye-witness Sohan Pal, as both of them had seen the alleged occurrence while accused was indulging in doing carnal intercourse with Dharmender, a child of about six years of age. On seeing both these witnesses, the accused rushed from the spot. The matter was immediately reported to the police. The medical examination of the victim was done and Dr. Madhu Lata Paul, who was examined as PW-1, had medico-legally examined the victim, Dharmender on 17.1.1997 at about 10.30 PM itself and proved her report Ex. PA. During medical examination, the doctor observed that there was sticky material present over anal area. Contusion $\frac{1}{2} \times \frac{1}{4}$ inch was present over the anus. Abrasion was present over right superior border and patient [Dharmender] was not allowing deep examination. The doctor has specifically opined that possibility of sodomy could not be ruled out.

9. As regards to the plea of learned counsel for the petitioner that as per FSL report, no semen was detected on the underwear of the accused, the present case pertains to the offence punishable under Section 377 IPC for

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having committed carnal intercourse and even penetration is sufficient to constitute carnal intercourse. There need not be necessarily a seminal discharge for constituting the carnal intercourse. Such a view as taken by this Court in Man Singh Vs. The State of Haryana, 1983(2) R.C.R. (Criminal) 421.

10. As regards to the plea of defence, it has come in the statement of DW-1, Yaspal, Information Assistant, CHC Korali, Ballabgarh itself that on 17.1.1997, Vinod son of Dharambir was medico-legally examined by doctor as OPD patient only vide out door ticket [Ex. DW-1/A] and he had made complaint of fever. However, in the cross examination, this witness had admitted that on 17.1.1997, he was not posted in CHC, Korali. He could not identify the handwriting or signature of the official, who had recorded the entry in the Register. He was not aware about the distance from CHC, Korali to the place of occurrence. Meaning thereby, that even if the petitioner had gone to CHC, Korali as an OPD patient in the early hours of the day, there was nothing to prove that he was not present at the spot. The fact that the accused was present at the spot has been proved on the file as per testimony of both the eye-witnesses, who have well-stood by the test of cross-examination. The ocular testimony is duly supported and corroborated by medical evidence.

11. In view of the above, this Court does not find any merit in any of the submissions made by learned counsel for the petitioner. Consequently, the present revision petition is without any merit and stands dismissed. The petitioner is on bail in this case. His bail/ surety bonds shall stand cancelled.

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The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps to comply with the order, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of three months, from the date of receipt of a copy thereof. The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SHEKHER DHAWAN)
JUDGE

November 21, 2016

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes