

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Revision No.42 of 2016 (O&M)

.....

Date of decision:7.4.2016

Vinod Kumar

...Petitioner

v.

State of Haryana

Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Naresh Kaushik, Advocate for Mr. Jarnail Singh Saneta,
Advocate for the petitioner.

Mr. Himmat Singh, Deputy Advocate General, Haryana for
the respondent-State.

.....

Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. against the impugned judgment dated 13.11.2015 passed by learned Additional Sessions Judge, Karnal, vide which the appeal filed against the judgment of conviction dated 27.2.2012 and order of sentence dated 29.2.2012 passed by the then Additional Chief Judicial Magistrate, Karnal, convicting the petitioner for the offence under Section 377 IPC and sentencing him to undergo rigorous imprisonment for two years and to pay fine of ₹2,000/- and in default of payment of fine to further undergo simple imprisonment for two months, has been dismissed.

Notice of motion was issued in this case.

Mr. Himmat Singh, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested the criminal revision petition. Record of the lower Courts was also summoned.

I have heard leaned counsel for the petitioner and learned Deputy Advocate General, Haryana and have gone through the record.

The brief facts of the case as given in the judgment dated 27.2.2012 passed by learned Additional Chief Judicial Magistrate, Karnal are as under:-

“Brief facts of the prosecution's case are that on 2.5.2010, complainant Pawan Kumar son of Puran Chand, resident of village Subhri, presented a complaint in the police station stating therein that he is working with Kalyan Filling Station, Kohand and he has three children. His younger son Vansh is about 6 years old. On 2.5.2010, he was present at home and his son Vansh while weeping came in the house. He enquired from him about the matter. On this, his son Vansh told that he is feeling pain in his anus and on this complaint, he put off Nikar of Vansh and noticed blood on the anus. He suspected that someone has committed carnal intercourse with his son. He made inquiry at his own level and came to know that Vinod son of Babur Ram has sodomized his son. Further stated that this occurrence has taken place at about 9.00 a.m. On the basis of this complaint, present case was registered for the commission of offence punishable under Section 377

against the accused. Investigation was conducted. Site plan of the place of incident was prepared. The victim Vansh was got medico legally examined. Statements of witnesses under Section 161 Cr.P.C. were recorded and the accused was arrested. Relevant documents were taken into police custody. After completion of other formalities of investigation, final report under Section 173 Cr.P.C. was prepared and submitted in the Court for putting the accused on trial.”

On presentation of challan, the trial Court finding *prima facie* case against accused-Vinod Kumar, framed charge for the offence under Section 377 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Pawan Kumar-complainant, PW-2 Iqbal Khan, PW-3 Constable Yashpal, PW-4 Dr. Sucha Singh, PW-5 Ram Chander ESI and PW-6 Rajive Kamatra, Senior Scientific Officer, FSL, Madhuban.

The learned Additional Chief Judicial Magistrate, Karnal, vide judgment dated 27.2.2012 convicted the accused for the offence under Section 377 IPC and vide order dated 29.2.2012 the accused-petitioner has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo simple imprisonment for two months. Aggrieved against this judgment and order, an appeal was filed which was also dismissed by learned Additional Sessions Judge, Karnal, vide impugned judgment dated 13.11.2015.

After going through the record, I find that as per the

prosecution version, the FIR had been got registered by Pawan Kumar-complainant. In the FIR the minor son of Pawan Kumar had not stated regarding committing of the offence with him by the accused. Rather, he only complained of pain and then Pawan Kumar after pulling his shorts came to know regarding bleeding and then the medical examination of his son was got conducted and the matter was reported. As per the medical evidence offence of sodomy had been committed. But the prosecution had failed to connect the accused beyond a reasonable doubt with the commission of the offence. Firstly, the minor, with whom the offence had been committed, has nowhere named the accused and told anything after the occurrence to his father-complainant Pawan Kumar. Secondly, the minor son had not been examined in the Court nor there is any explanation as to why he had not been produced in the Court. He was stated to be about five years at the time of occurrence. Therefore, due to non-production of the minor child, there is no direct evidence pointing towards the guilt of the accused/petitioner. The statement of PW-1 Pawan Kumar that he came to know from his source that the accused had committed the offence cannot connect the accused with the crime. The statement of another private witness PW-2 Iqbal Khan is only to the extent that he had seen the minor child with the accused going on cycle towards Dera. At the most, it can be held as last seen evidence, but this circumstance only cannot connect the accused/petitioner with the crime in the absence of evidence of any other witness. Even a perusal of the statement of PW-2 Iqbal Khan shows that he had seen the child with the accused and as per his statement he told the complainant regarding this

fact before the registration of the FIR and rather, as per statement he was also with the complainant when the application was given to the Police for registration of the FIR, but, there is no such mention of this last seen evidence in the FIR, which further creates doubt in the prosecution version. Even the complainant was knowing that the minor child was seen by Iqbal Khan in the morning going to some Dera etc. then this fact should have been mentioned in the FIR, but this fact had not been mentioned in the FIR, which further creates a reasonable doubt in the prosecution version.

Therefore, a reasonable doubt exists in the prosecution version, hence the accused/petitioner is entitled to acquittal. Both the Courts below have not appreciated the evidence in the right perspective and had misread the evidence. Therefore, the impugned judgments and order of sentence passed by the Courts below are set aside.

Consequently, the criminal revision petition is allowed and petitioner Vinod Kumar is acquitted of the charge. He be released forthwith if his custody is not required in connection with any other case.

April 7, 2016.

(Inderjit Singh)
Judge

hsp