

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRA-S-3448-SB-2017 (O&M)
Reserved on: 31st October, 2017
Pronounced on 13th November, 2017

Akhlak .. Appellant

versus

State of Haryana ..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Jaspal Pannu, Advocate, for
Mr. J.S.Gill, Advocate, for the appellant.

RAMENDRA JAIN, J.

1 The appellant has filed this appeal assailing the judgment of conviction dated 24.8.2017 and order of sentence dated 25.8.2017 of the Additional Sessions Judge, Faridabad, under sections 365,377, 506 IPC and section 6 of the POCSO Act in the following terms:-

Under section 365 IPC To undergo rigorous imprisonment for three years and pay a fine of Rs,1000/-. In default thereof, further undergo seven days.

Under section 377 IPC To undergo rigorous imprisonment for ten years and pay a fine of Rs,5000/-. In default thereof, further undergo one month.

Under section 506 IPC To undergo rigorous imprisonment for one year and pay a fine of Rs.1000/-. In default thereof, further undergo for seven days.

Under section 6 POCSO Act To undergo rigorous imprisonment for ten years and pay a fine of Rs,5000/-. In default thereof, further undergo one month.

All the sentences were ordered to run concurrently.

2. Briefly stated, the accused as a tenant, was running a refrigerator repairing shop in village Dhauj. The child, (hereinafter referred to as “the victim”) son of the complainant Salauddin, aged 12 years, had become a friend of the appellant since last 1 ½ years and thus, both were on visiting terms with each other. The victim and the appellant along with motorcycle bearing registration no. HR-51-AT-8924 went missing in the evening of 14.6.2016 and despite best efforts, they could not be traced. Therefore, the complainant moved an application Ex.PD, to the police raising suspicion that some one had kidnapped them, which culminated into the FIR. During investigation, the statements of the material witnesses were recorded. The victim was recovered from the custody of the appellant. The aforesaid motor-cycle was taken into possession from the appellant. The appellant and the victim were got medico-legally examined. After completion of necessary formalities, report under section 173 of the Code of Criminal Procedure was presented before the court.

3. After complying with the provisions of section 207 of the Code of Criminal Procedure, copies of challan were supplied to the accused. They were charge sheeted under sections 365, 377, 506 IPC and 4 of the Protection of Children From Sexual Offence Act, 2008 (in short the “POCSO Act”).

4. The prosecution, in support of its case, examined as many as

12 witnesses. The statement of the accused under section 313 of the Code of Criminal procedure was recorded putting entire incriminating evidence came on record against him. He pleaded his false implication. He, however, did not lead any evidence in defence.

5. After hearing both the sides, the trial court convicted and sentenced the appellant in the manner as narrated in the opening part of this judgment.

6. Learned counsel for the appellant contends that according to the initial version mentioned in the complaint Ex.PD, the appellant and the victim went on missing since 14.6.2016, but the FIR was registered after four days on 18.6.2016, which casts serious dent in the prosecution story. Both the appellant and the victim were known to each other, who had gone to attend the marriage at Jaipur and stayed there in a hotel. None of the witnesses from the alleged hotel, where the appellant and the victim had, allegedly, stayed or any other witness from Jaipur or scrap vendor from whom the appellant had taken the alleged money in the presence of victim were examined by the prosecution to complete the chain of link evidence. According to the prosecution, carnal intercourse was committed by the appellant with the victim in village Aherwan falling in district Palwal, where the appellant had taken a shop on rent. Both of them used to visit mosque, but no person from the said village or even a clergy of the mosque was examined by the prosecution to corroborate the testimony of the complainant and victim. Thus, on the basis of uncorroborated sole testimony of the complainant, the conviction of the appellant was illegal. According to PW7 Dr. Upender Bhardwaj, no injury was found on the person of the victim. Even Kallu whose motorcycle, allegedly, was taken

away by the appellant was not examined to corroborate the prosecution version. PW-7 Dr. Upender Bhardwaj, had testified that photoscopic test of the witness was conducted and anal was found normal, i.e., no abnormality was found in the region, therefore carnal intercourse with the victim by the appellant was not proved. Strangely enough, after the alleged call of the victim to his father, he appeared within five minutes at the spot and effected the recovery of his son, creates a suspicion about the prosecution story, inasmuch as village Dhauj from where the recovery is effected is at far away place. The things did not happen in the manner narrated by the prosecution.

7. Having given thoughtful consideration to the submissions made by learned counsel for the appellant, the appeal, being without any merit, fails and deserves to be dismissed for the following reasons:

8. From the testimony of PW1 Subhash Dudeja, Principal Government Senior Secondary School, Dhauj, it is established on the record that date of birth of the victim was 17.12.2003. A certificate Ex.PA/1, in this regard, has been issued regarding the date of birth of the victim.

9. In order to substantiate its case, the prosecution examined the victim as PW2, who has categorically deposed that he is a student of 7th standard, studying in Government School, Dhauj, Faridabad. He belongs to Sikrawa. His father runs a shop of mobile phone in village Dhauj. His brother and father used to sit in the shop in the day time, whereas his father in the evening time. The shop of washing machine and refrigerator, being run by Fufa of the appellant is in front of his shop, where the accused was employed, therefore, he knew him. On 14.6.2016, the appellant allured him and took him away by alleging that he had to take petrol for his motor-cycle. Thereafter, the appellant took him to Faridabad, from where he took

some money from a scrap vendor. At around 6.00/7.00 A.M., the appellant then took him to village Manger, where he repaired a washing machine in a house. He had already kept his clothes in that house. Then he assured him to go to Sohna, but he proceeded to Jaipur. When he asked the appellant about Sohna that had not come, he asked him that he had enticed, misguided him and had to take him to Jaipur. He reached Jaipur by motorcycle. Thereafter, he took a room in a hotel, where they slept for one night. He stayed there quite well with him during that night. On the next day, he started looking for a rented shop for doing the work of repairing washing machine and fridge, but could not succeed. In Jaipur, he used to threaten him. Then, both of them came back to village Aharwan, District Palwal. He took a shop on rent at village Aharwan. He along with the appellant used to remain in shop during the day time and on account of Rojas, they used to go to mosque (Masjid) in the evening for first five days for taking shelter in the night. On the sixth day, the accused-appellant took him to forest (jungle) in the night and committed carnal intercourse (sodomy) with him forcibly and also threatened him to eliminate, in case, he disclosed this incident to anyone or his family members. He also beat him up mercilessly and then he took him on the same shop which he had taken on rent in village Aharwan, where they slept over the roof of the shop. There also, he committed unnatural intercourse with him forcibly. In the morning, when he tried to narrate the incident to some one, he threatened to kill him. Then on the next day, he made a call to his father from the mobile of the appellant when he was taking rest in the same shop due to headache during day time. His father reached the spot within five minutes as he had already been looking for him in that area. He accompanied the police party. Thereafter, the police

officials took him in Faridabad. His statement Ex.PB was recorded by the police in the presence of legal aid counsel. He also got recorded his statement Ex.PC before the learned Illaqa Magistrate. He was medico-legally examined from the Government Hospital, Ballabgarh.

10. The above testimony of a minor victim is above board and quite natural. Despite his lengthy cross-examination, nothing could be elicited in favour of the appellant. The above narration of the minor victim cannot be disbelieved in the absence of any rebuttal from the side of the appellant, especially when no motive or ill-will has been attributed to the minor victim against the appellant. Moreso, it is impossible that a minor, aged 12 years, on tutoring, would depose in such a manner, detailing each and every event and happening during day and night in a chronological orders. The sequence of events were narrated exactly by the minor victim in the same manner as it occurred with him during this episode. He corroborated his earlier statements Ex.PB and Ex.PC. He categorically deposed before the trial court, narrating the same version occurred with him. Therefore, the statement of the child witness lends credence to the version of the prosecution. A perusal of the record further shows that the victim appeared two times before the authorities concerned, i.e., police and the learned Illaqa Magistrate and then, third time, appeared before the court as PW2. On every occasion, the statement of the victim remained unshattered. He remained in the company of the appellant for seven days. On account of persistent threats to kill the victim, he got frightened, kept quiet and did not elicit with respect to abduction and carnal intercourse. The moment he got an opportunity when the appellant was taking a rest for a short while, he made a telephonic call to his father, narrated him the incident and then his father,

in no time, along with police team rushed at the spot. Therefore, the sole testimony of the victim is sufficient to subscribe the real happening of anal intercourse by the appellant with him.

11. With respect to unnatural intercourse by the appellant with the victim, prosecution examined PW7 Dr. Upender Bhardwaj, deposed that on 22.6.2016, he was posted as a Medical Officer in B.K. Hospital, Faridabad. On that day, police produced the victim along with application Ex.PG/1 before him for Surgeon's opinion. He medico-legally examined the victim. After examination, he gave his opinion Ex.PG that possibility of anal sex cannot be ruled out. PW12 Dr. Maan Singh tendered in evidence his affidavits Ex. PW12/A and Ex.PW12/B. In affidavit Ex.PW12/A, he testified that on 21.6.2016, he medico-legally examined the victim. He proved the MLR, Ex.PQ, of the victim and deposed that after noticing the Surgeon's opinion Ex.PG and going through the MLR, Ex.PQ, he is of the opinion that possibility of anal intercourse (unnatural intercourse) cannot be ruled out. In affidavit Ex.PW12/B, he deposed that on 21.6.2016 he medico-legally examined the appellant and proved the MLR, Ex.PR, of the appellant.

12. PW3 Babudeen, testified that he was the owner of Motor-cycle bearing registration no.HR-51-AT-8924 make 'Splendour'. About 7-8 months prior to the incident of this case, he had sold this motorcycle to the appellant. He also got issued "No objection certificate" in the name of the appellant.

13. Salauddin, father of the victim, stepped into the witness box as PW4 and categorically deposed that the victim, his son, is aged 12 years. In front of his shop, there is a shop of repairing washing machines and refrigerators being run by Fufa of the appellant, where the appellant used to

do the work for the last two years. On account of this fact, he also used to visit his shop. At around 5.00 P.M on 14.6.2016 appellant Akhlak took his son with him on motor-cycle bearing registration no.8924. He looked for his son in the vicinity as well as in relations, but to no avail. On 18.6.2016, he moved an application Ex.PD duly signed by him with the police for registration of the case. The police swung into action. On 21.6.2016 he received a telephonic call from his son narrating incident to him that appellant Akhlak allured him on the pretext of taking money from Faridabad and then took him to Jaipur. Both of them spent a night in Jaipur. On the next day, the appellant took him at village Aharwan, Hathin and kept him there in confinement and during night time, he took him in a jungle and committed anal intercourse with him, threatening to eliminate him in case he disclosed the incident to anyone. The appellant gave him merciless beating and asked him to get him freed. Thereafter, his son disconnected the telephone. He reported the matter to the police. He along with the police party reached the spot and with the help of villagers, the officials of the police team arrested the appellant. His son was recovered vide recovery memo Ex.PE, duly signed by him. Motor-cycle of the appellant was also got recovered. Then they returned to police post Dhauj. The police recorded the statement of his son and also got recorded his statement before the Illaqa Magistrate. His son and accused Akhlak were got medico-legally examined. ASI Pardeep Kumar stepped into the witness box as PW11 and corroborated the version of the prosecution in material particulars.

14. The sole question that arises for consideration is that for first five days, the appellant remained quite calm as he was busy in travelling with the victim from one place to another as if he wanted to repose

confidence in him that the victim was quite safe in his company. It was only because of this reason that the journey performed by the appellant on motor-cycle from Faridabad to Jaipur and back remained so hectic that he could not avail an opportunity of doing illegal act. Even otherwise, in a normal course, there must be a slight fear in the mind of the appellant that the victim could elicit any incident that might be occurred with him on their way to any one. This was the reason that he must have changed his thoughts and ultimately, made up his mind to commit carnal intercourse on his return journey in the jungle of Aherwan, District Palwal, the place with which he must have acquainted. It has been established on the record that the victim remained in the captivity of appellant for seven days. From this fact alone, it can easily be inferred that a bad idea must have generated in the mind of the appellant to commit unnatural intercourse with the victim, otherwise, there was no reason to keep a child with him for seven days.

15. An argument that the prosecution did not associate independent witnesses from the places where the appellant and the victim remained halted during day and night, such as, owner of the Hotel in Jaipur, a scrap vendor from Faridabad with whom the appellant took some money in the presence of the victim, has no legs to stand, inasmuch as, the offence was not committed in Jaipur or Faridabad on account of the fact that the appellant wanted to show outwardly that the victim was not a stranger and was not accompanying him unwillingly so that a finger of suspicion may not arise upon him and by that time, the child remained quite innocent, not knowing the monstrous trick created in his mind and remained in the company of the appellant without protest, reposing faith in him, but the appellant, on the other hand, cleverly wanted to give it a practical shape at

once at a safer place and ultimately, he selected a solitary place in the jungle of Aherwan, District Palwal and committed unnatural intercourse with him. Therefore, there was no necessity for the prosecution to cite witnesses from far away places such as clergy of a mosque and Kallu, the brother of the appellant, being irrelevant. Moreso, it was not the case of the defence that the victim did not remain in company of the appellant throughout travelling from Faridabad to Jaipur and then back on a motorcycle. As soon as a telephonic message received by the father of the victim, he swung into action and rushed at the spot with the help of police and got arrested him in the company of the victim.

16. The prosecution case is fully corroborated by the testimony of PW7 Dr. Upender Bhardwaj and PW-12 Dr Mann Singh. PW12 Dr Mann Singh examined the victim on the same day of his recovery. Lacerated wound with muscle deep with irregular margin on the anal region and multiple abrasions on the whole anal region clearly corroborates the ocular evidence by the prosecution witnesses.

17 I have gone thorough the well reasoned judgment of the court below and find no illegality therein that may warrant interference by this court in exercise of revisional jurisdiction. That apart, in my considered view, such types of persons who are demon by temperament on the earth and harmful to the man kind must be dealt with severe hands and suitably punished. Moreso, in the facts and circumstances of the case, the testimony of the minor victim can not be doubted in any manner, inasmuch as his statement has been tested on three occasions, firstly before the police under section 161, the learned Illaqa Magistrate while recording his statement under section 164, Code of Criminal Procedure, and then appearing in the

witness box before the trial court as PW2. In such circumstances, it can easily be concluded that there was no reason for the victim to implicate the appellant falsely. The appellant did not lead any evidence in defence, though opportunity was afforded to him to rebut the case of the prosecution by producing his cogent and convincing evidence, but failed to do so.

18 In view of the foregoing reasons, I do not see any illegality or perversity in the impugned judgment of Additional Sessions Judge, Faridabad and as such, findings recorded therein are affirmed. Consequently, revision, being without any merit, fails and is dismissed.

13th November, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable | Yes/No |