

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

**CRR No.2191 of 2008 (O&M)
Date of Decision: 13th November, 2017**

Vijay ..Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This revision by the convict-Vijay has arisen as a consequence of two consecutive findings, one by the trial Court of learned Judicial Magistrate 1st Class, Faridabad, who through judgment dated 06.08.2007 has held the petitioner/convict guilty for commission of offence under Section 377 IPC and sentenced him to undergo rigorous imprisonment for a period of 03 years and to pay fine of Rs.3000/- and in default thereof to undergo simple imprisonment for a period of two months. Furthermore, the same has been upheld by the learned 1st Appellate Court through judgment dated 07.08.2008 and, thus, faced with this agony of two consecutive findings, the petitioner has come up in this revision before this Court.

Upon hearing learned counsel for the parties and

perusing the records of the case.

Before appreciating the rival arguments of the two sides, the brief gist of the allegations of the prosecution are that on 20.07.1999 complainant-Shamsher Singh got recorded his statement before HC Fattan Singh that out of his three sons victim who is aged around 14 years (name withheld) was mentally retarded by birth. He further alleged that on 19.7.1999 his son-victim had gone for a walk around 6.30.p.m. but did not return back and when he went out for his search, near a kothi, he heard shrieks of his son and when he went inside saw the convict-petitioner committing an unnatural act with his minor son and apprehended him at the spot with the help of people leading to his arrest and registration of the present case.

The prosecution at the trial examined Dr. PW1 S.S. Yadav, who conducted medico legal examination of the accused as well as victim, PW2 SI Bishmber Dayal, PW3 HC Jaswant Singh who detailed the investigations, whereas, complainant has testified as PW4 followed by testimonies of PW5 Ram Chander and PW6 Dr. M.K. Goel, Assistant Director, FSL Madhuban, thereafter, prosecution evidence was closed by order. The accused in his stand taken under Section 313 Cr.P.C denied the allegations and pleaded innocence but did not lead any evidence in defence. That is how the petitioner is before this Court in this case.

The first and foremost contention raised by the learned counsel for the petitioner is that neither the Investigating Officer nor victim have been examined and, thus, a serious dent has been created in the prosecution story and which undermines the very findings of the Court

below and has sought to create doubt over the veracity of the statement of the complainant being a father of the victim. Same is sought to be opposed by learned State counsel with much force and vehemence who has drawn attention of the Court to the testimonies of PW1 Dr. S.S. Yadav and PW5 Ram Chander to hammer home the point that the case of the prosecution has been proved beyond any shadow of doubt.

Going through the submissions of the two sides, since the two Courts below have given consecutive findings and the petitioner has come up before this Court in revision by virtue of provisions of Section 401 Cr.P.C and, thus, the very parameters revolve around legality and propriety of these findings under assail. As has been argued by the learned State counsel, the testimony of PW1 Dr. S.S. Yadav to the effect that petitioner was fit enough sexually and the medico legal examination of the victim by this witness bears out on the basis of Ex.PW1/A that sodomy had been committed and the testimony of PW6 Dr. M.K. Goel, Assistant Director, Forensic Science Laboratory has proved the report Ex.PW6/A and the fact of having detected semen on Ex.1A and Ex.B-1 which corroborates materially that human semen was detected from these exhibits. The official witnesses PW2 SI Bishamber Dayal and PW3 Jaswant Singh have brought about important aspects of the investigations that the complainant-father Shamsher Singh, PW4 is the eye-witness of the occurrence and has apprehended the accused at the spot leaves no scope to doubt the truthfulness of the story of the prosecution. Even learned counsel for the petitioner could not pinpoint anything adverse that has come up in his cross-examination and, thus, corroborated materially by the deposition of

PW5 Ram Chander. It is not a material lacuna which would go to the roots of the prosecution story, if the Investigating Officer is not examined and the formal documents and investigations have been very well brought on the records. More so, the non-examination of the victim, who not only as per the testimony of the father as well as doctor was mentally retarded but is minor as well further supports the stand of the prosecution and the reasons why this witness was unable to testify because of mental illness are matters of serious consequences. The Courts below in the impugned findings have considered every aspect of the matter in details and have appreciated the evidence and the law correctly. Nothing can be pointed out by the learned counsel for the petitioner which could impel this Courts to exercise its powers of revision and intervene in the findings so recorded by the Courts below. The Courts below have rightly held that the eye-witness direct account and the prosecution is materially corroborated by the medical evidence and the findings in question certainly clears the test of legality and propriety. Thus, finding no merits the present petition stands dismissed.

November 13, 2017

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**(FATEH DEEP SINGH)
JUDGE**

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No