

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

CRR No.3526 of 2012

Date of decision: 9th January, 2017

Ajay

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amaninder Preet, Advocate
Amicus Curiae for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The convict petitioner Ajay who at the relevant time of occurrence, that took place on 10.04.2009 around 5.00 p.m., was working as a compounder with a medical practitioner when he committed carnal intercourse against the law of nature with the prosecutrix, a minor girl aged around 11 years when the latter had gone at the clinic to get medicine. On the basis of this, FIR by way of Ex.PW14/B was registered on 19.04.2009 at the behest of the prosecutrix and as a consequence of which the police got medical examination conducted on the accused by way of MLR Ex.PW1/8 and his undergarments were taken into police possession by way of memo Ex.PW10/C. The medical examination of the girl Ex.PW9/A was conducted and her swabs and undergarments were taken into police possession by way of memo Ex.PW10/A and it was

thereupon statements of the witnesses were recorded and site plan by way of Ex.PW4/D was got prepared along with scaled site plan Ex.PW6/A. On completion of the investigation, challan was presented in the Court.

Prosecution examined PW1 Dr.S.S. Dahiya; PW2 complainant/prosecutrix; PW3 Vikash Joshi (father of the girl); PW4 Seema (mother of the girl); PW5 Suresh Kumar; PW6 Ram Niwas Draftsman; PW7 EHC Raj Pal; PW8 Jagbir Singh; PW9 Dr.Neelam Kakkar; PW10 HC Bhagirath; PW11 HC Om Parkash; PW12 EHC Dharam Singh; PW13 JMIC Kaithal Rajnish K. Sharma; and lastly PW14 Investigating Officer SI Satpal. The accused denied the allegations but did not lead any evidence in defence.

The Court of learned Judicial Magistrate 1st Class, Kaithal vide judgment dated 12.08.2009 held the accused guilty of offence under Section 377 IPC and convicted/sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/-. It was against this very finding, the convict had preferred an appeal which stood dismissed by the Court of learned Sessions Judge, Kaithal through judgment dated 07.09.2012 upholding the findings of trial Court. That is how the petitioner has come up in this revision before this Court.

After hearing at length Mr.Amaninder Preet, Advocate appearing as Amicus Curiae on behalf of the revisionist petitioner and Mr. Deepak Sabharwal, Addl. Advocate General, Haryana on behalf of the State and on perusal of the records.

It is well elicited in the oral evidence of the prosecutrix PW2 who is a growing up girl, though a minor, and who has reiterated the allegations and which have been given corroboration by the testimonies of her father PW3 Vikash Joshi, mother PW4 Seema and PW5 Suresh Kumar. The same is well corroborated by the medical evidence brought about by PW9 Dr.Neelam Kakkar and PW1 Dr.S.S. Dahiya. From the medical evidence, it is very much evident that there were small lacerations on the anal area on the posterior aspect, is in itself suggestive of the commission of offence that too with a minor.

The contentions that have sought to be reiterated by learned Amicus Curiae for the petitioner that there is no semblance of evidence by way of proof of semen having been found from the swabs or the undergarments, are well answered by the prosecution side as not only some material time has been lost between the occurrence and the medico-legal examination of the girl and the fact that when there is material corroboration to the ocular version by the medical evidence, whereby lacerations have been observed on the anal region, leaves no scope to doubt the veracity of the same by any means. Thus, the learned Amicus Curiae for the revisionist could not pinpoint anything averse that has come against the prosecution which could create a doubt in the mind of the Court as to the truthfulness of the same.

The plea that has sought to be raised even before the trial Court and is sought to be brought forth before this Court as well that

there has been a political rivalry and it is not possible to commit such an offence at the clinic, are matters which are more based on surmises and conjectures and cannot be taken as a rule when it has very well come in the oral testimony even of the prosecutrix that at that time the Doctor was not available in the clinic, are matters which rather further strengthens the case of the prosecution.

No other point was raised by learned Amicus Curiae for the petitioner who has sought to stress the fact that out of the awarded sentence of three years, the petitioner has already undergone three years including remissions, certainly is also well elicited from the custody certificate placed before this Court. The convict has already paid the fine as is reflected from the records and has already undergone the sentence of imprisonment awarded to him as per the jail rules. Apparently, the accused at the time of commission of offence was a young boy and has suffered enormously by undergoing this incarceration though the Court considers that the sentence of imprisonment awarded ought to have been on the higher side, but keeping in view that more than seven years have elapsed and the sword of Damocles has been hanging on the head of the accused/petitioner and who must have already suffered enormously on account of this wrongful rezenduous. Thus, it would meet the ends of justice of what he has already suffered during this period, in the light of the same and in view of the fact that State too has not preferred to challenge this sentence of imprisonment. Thus, in the light of the same

and finding no illegality or perversity in the concurrent findings of the two courts below, the present petition stands disposed off as the convict/petitioner has already undergone the sentence so awarded. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

January 9, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No