

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

CRR No.794 of 2017 (O&M)

Date of Decision: March 06, 2017

Naresh Kumar

....Petitioner

vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Kanwar Satbir Singh, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J.

In terms of judgment dated 20.04.2015 and order of sentence carrying even date, the petitioner was convicted for offence under Section 377 of the Indian Penal Code by the Sub Divisional Judicial Magistrate, Abohar and sentenced to undergo rigorous imprisonment for a period of three years along with fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. The judgment of conviction stands affirmed in appeal in the light of decision dated 12.10.2016, passed by the learned Additional Sessions Judge, Fazilka.

The instant revision petition is directed against the

concurrent conviction of the petitioner under Section 377 of the Indian Penal Code.

Brief prosecution version may be noticed at the outset.

MLR bearing No.UK/40/09 dated 13.11.2009, was received in Police Station City-II, Abohar, whereupon, ASI Puran Chand along with other police officials reached Civil Hospital Abohar, whereupon, victim informed that his father had gone outside. ASI Puran Chand returned back and again on 14.11.2009, reached Civil Hospital and recorded the statement of complainant Raj Kumar son of Ram Chand. Complainant asserted that he was a rickshaw puller by profession. On the previous date i.e. on 13.11.2009 at about 6.30 P.M., accused Naresh Kumar son of Mohal Lal who was running a Nohra of animals in Street No.1, Rajiv Nagar, had come to his house and had asked the victim aged about eight years that he may assist him by holding a stick so that he can tide over the cows. Son of the complainant is stated to have proceeded along with Naresh Kumar. When the victim did not come back for a considerable length of time, complainant proceeded to the Nohra of Naresh Kumar and whereupon, he heard loud cries coming from inside. Complainant having entered the Nohra saw accused Naresh Kumar holding his son between his knees and performing anal

intercourse. Complainant tried to catch accused Naresh Kumar but he fled outside while holding his pyjama. Complainant asserted that he noticed blood oozing from the anus of his son and having arranged conveyance got him admitted to Civil Hospital Abohar. On the aforesaid statement of the complainant, FIR was registered. Accused was arrested on 15.11.2009 and after completion of investigation, challan was presented against the accused before the competent Court. As per provisions of Section 207 of the Code of Criminal Procedure, copies of challan were supplied to the accused. On the basis of final investigation report and the documents attached therewith, a *prima facie* case under Section 377 of Indian Penal Code, was made out against the accused and he was accordingly charge sheeted vide order dated 13.02.2010, to which accused pleaded not guilty and claimed trial. In order to prove the charges against the accused, prosecution examined PW-1 HC Jalandhar Singh, PW-2 Dr. Yudhister, PW-3 SI Tarlok Singh, PW-4 Raj Kumar, PW-5 victim, PW-6 Dr. Vikrant Bajaj, PW-7 Mangal Singh and PW-8 ASI Davinder Singh. Statement of accused was recorded under Section 313 Cr.P.C. and the incriminating evidence was put to him. Accused denied all the allegations and pleaded false implication. However no defence evidence was led.

The trial has culminated in the conviction of the

accused/petitioner and order of sentence as noticed hereinabove. Conviction stands affirmed even by the Appellate Court.

Counsel representing the petitioner would argue that it is a case of false implication and the prosecution has not proved the case beyond shadow of doubt. He would submit that there are contradictions as also in-consistency in the versions of the prosecution witnesses. Counsel would argue that conviction of the petitioner cannot sustain as it has been recorded merely on the statement and deposition of the complainant who is none other than the father of the victim.

Having heard counsel for the petitioner at length and having perused the records of the case, this Court is of the considered view that no interference in the matter is warranted.

The occurrence is stated to be of 13th November 2009 during the late evening hours. Victim was admitted to Civil Hospital Abohar on the same very day and was medico legally examined at about 9 P.M on 13.11.2009 itself. The deposition of PW-2 Dr. Yudhister, Medical Officer, Civil Hospital Abohar, would be crucial. He has clearly deposed that as per Medico Legal Examination Report, Exhibit P-2/A the following injuries were noticed on the victim:-

“1. Lacerated wound 1cmx2cm was present on

12 'o' clock position of anus. Fresh bleeding from wound was present.

2. Lacerated wound .5cmx.2cm was present on 5 'o' clock position of anus. Fresh bleeding from the wound was present.

3. Contusion about 2cm wide was present around the anal opening.”

Two anal and perianal swabs having been sent to the chemical examiner, report No.3674 dated 03.12.2009, had been received and whereupon, Spermatozoa were detected. The allegations against the petitioner stand corroborated from medical evidence.

The deposition of Raj Kumar complainant examined as PW-4 is categorical. He has firmly stood and deposed in terms of his initial statement recorded by the police officials leading to the registration of the case. Even PW-7 Mangal Singh, independent witness, deposed that about 4 ½ years ago, at about 6.30 P.M. when he was present outside his house, he saw Naresh Kumar accused coming out of the Nohra and running, holding his pyjama in a nervous manner. PW-7 Mangal Singh, undoubtedly, was not an eyewitness to the occurrence but his deposition does support the prosecution version and corroborates the statement of PW-4 Raj Kumar.

Victim was stated to be eight years old on the date of

occurrence. He has stepped into witness box as PW-5 in the trial Court after judging the capability of victim to depose in Court and got his statement recorded. Victim in his statement, has specifically narrated the incident that took place on 13.11.2009 at about 6.30 P.M. and has reiterated the version of his father/complainant Raj Kumar PW-4. The victim has also identified the accused who was present in the Court.

It is not even the suggestion put forth by counsel that the accused/petitioner had any enmity with the prosecution witnesses or that on account of any past history, they were inimical towards him. The plea of false implication does not inspire any confidence.

It may be noticed that minor contradictions in the testimony of the victim, examined as PW-5, complainant-Raj Kumar PW-4 were bound to occur, since at the time of occurrence, the victim was only eight years old and the statements have been recorded after a gap of more than five years. Counsel has not been able to pin point any material contradiction or in-consistency in the testimony of the witnesses so as to shatter the prosecution version.

For the reasons recorded above, this Court is of the considered view that the conviction of the petitioner has been recorded by the Courts below after due appreciation of evidence

and after recording valid and cogent reason.

It is not a case which would call for any interference in exercise of the revisional jurisdiction of this Court.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

06.03.2017
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Whether speaking/reasoned : ***Yes/No***
Whether reportable ***:*** ***Yes/No***