

**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

Criminal Revision No.3301 of 2009
Date of decision: January 30, 2019

Rajinder Prasad

..... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

PRESENT: Mr. R.S. Sailani, Advocate, for the petitioner.

Mr. Sulinder Kumar, Assistant Advocate General,
Haryana.

Harnaresh Singh Gill, J

Through the present revision petition, petitioner-accused has challenged his conviction and sentence in case FIR No.102 dated 21.02.2004 under Section 377 IPC registered at Police Station, Sector-5, Panchkula, vide judgment and order dated 18.5.2009 passed by the Additional Chief Judicial Magistrate, Panchkula, whereby while convicting the petitioner for the aforesaid offence, he was sentenced to undergo the imprisonment for 3 years and to pay a fine of Rs.5000/- and in default of payment of the fine, to further undergo simple imprisonment for a period of one month. Such conviction and sentence was upheld vide judgment dated 5.12.2009 passed by the learned Sessions Judge, Panchkula.

The brief facts giving rise to the present case are that FIR in question was lodged on the statement/complaint (Ex.PW2/A) of Raju Ram son of Subachan Ram, resident of Jhugi No.542, Azad Colony,

Sector-3, Panchkula [permanent resident of village Bistrampur, Police Station, Bhurkura, District Gajipur (U.P.)]. He made the statement to police party headed by ASI Gian Chand, Incharge, Police Post, Sector 221, Panchkula, on 22.02.2004, to the effect that on 21.02.2004, his daughter Anjana went to a grocery shop of Kalu Ram. When she did not return for a long time, his wife went in search of their daughter to the shop of Kalu Ram, who told her that after buying a toffee, Anjana went back but she fell down on the road and petitioner-Rajinder took her towards the tap to wash her face. Anjana's mother searched for her but could not find the whereabouts of her daughter. Thereafter, her elder brother Misri Lal and nephew Shalesh Kumar went in search of Anjana. One Praveen Kumar son of Arjun told them that he had seen Rajinder with Anjana while going towards Ghaggar. They alongwith Praveen Kumar went towards Old Chowki in the jungle where they heard the cries of a child. When reached there, Rajinder left Anjana and ran away towards the jungle. Anjana's anus was bleeding and her clothes were splattered with blood. They brought her home. Complainant came home at about 12.00/01.00 O'clock, whereafter his wife had narrated the incident to him. Thereafter, on the statement of the complainant, FIR (Ex.PW2/A) was lodged. Accused was arrested.

On completion of investigation, final report under Section 173 Cr.P.C. was submitted before the court and documents were supplied to the accused, as required under Section 207 Cr.P.C.

Finding a prima facie case against the accused, he was chargesheeted under Section 377 IPC, to which, he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution had examined as many as 12 witnesses.

Statement of accused under Section 313 Cr.P.C. was recorded wherein incriminating circumstances appearing in the prosecution, were put to him. He pleaded innocence and false implication. No evidence, however, in defence was led.

After hearing learned counsel for the petitioner-accused and the learned State Counsel and appreciating the oral as well as documentary evidence, trial court, vide impugned judgment dated 18.05.2009 convicted the accused under Section 377 IPC and sentenced him to undergo RI for a period of three years alongwith fine to the tune of ₹ 5,000/-, and in default of payment of fine, to further undergo simple imprisonment for one month.

Aggrieved by his conviction and sentence vide aforesaid judgment, petitioner-accused preferred an appeal before the appellate court, which was also dismissed vide impugned judgment dated 05.12.2009.

Now, dissatisfied with the judgments passed by the courts below, petitioner-accused has approached this Court.

Learned counsel for the petitioner has vehemently contended that impugned judgments passed by the courts below are not sustainable in the eyes of law and are against the settled canons of law. Misreading and misappreciation of evidence has led to the miscarriage of justice. Prosecutrix was not examined by the prosecution, as a result of which, accused has been deprived of his right to cross-examine the prosecutrix.

Infact, complainant owed some money to the accused and in order to

avoid repayment, a false story has been concocted. Undergarments of prosecutrix were washed off by her mother, whereas it was incumbent upon the prosecution to get the unwashed undergarments examined.

Learned counsel for the respondent-State has contended that present criminal revision petition deserves to be dismissed as petitioner-accused has been held guilty and rightly convicted by both the courts below. Each and every aspect of the case has been thoroughly considered by the lower courts. Petitioner committed a heinous crime and the prosecution has proved the guilt of the accused beyond all reasonable doubts.

This Court has considered the rival submissions of learned counsel for the petitioner-accused and learned counsel for the State and gone through the record.

It would be apt and proper to reproduce Section 377 IPC, which reads as under:-

“377. Unnatural offences.— Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.— Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

In the case in hand, a minor girl of the age of five years is the victim. Her father Raju Ram is the complainant, on the basis of whose statement, FIR was lodged. Complainant was examined as PW-2, who reiterated the entire facts of complaint. Her statement was corroborated by PW-1 Shalesh Kumar and PW-3 Misri Lal, who had

found prosecutrix Anjana in a bad condition when her anus was bleeding and accused Rajinder had run away from the spot.

PW-6, Dr. Neeru Kapoor, medico legally examined prosecutrix Anjana. She found redness in vaginal orifice, laceration 1 cm x .2cm on anal orifice in the middle towards spine and redness in anal orifice. PW-9, Dr. S.S. Sahni, medico legally examined petitioner – accused and deposed that there was nothing to suggest that he was not capable of performing sexual intercourse.

So far as non-examination of prosecutrix is concerned, she was of tender age (five years) and was not in a position to explain the occurrence. Her father stepped into witness box as PW-2 who recapitulated the entire complaint and his version was further supported by two eye witnesses Shalesh Kumar and Misri Lal, PW-1 and PW-3, respectively, who identified the accused at the spot. They brought Anjana to home in a bad condition as her anus was bleeding. As such, there is no doubt that accused had committed an offence under Section 377 IPC with a minor girl, namely Anjana.

Though, there may be minor discrepancies in the statements of witnesses. This Court is of the view that minor discrepancies are likely to occur due to the passage of time and those are not fatal to the case of prosecution, that too, when a minor girl has become the victim of a heinous crime committed by the petitioner-accused.

Thus, the prosecution has produced reliable and trustworthy evidence coupled with the totality of other facts and circumstances, emanating from the evidence on record, which takes this Court to the conclusion that the petitioner-accused has committed the crime in the

manner projected by the witnesses and the prosecution has established the guilt of the petitioner.

The Hon'ble Supreme Court in State of Kerala Vs. Kurissum Mootil Antony, 2007(1) SCC 627, while examining an identical issue of the carnal intercourse by an accused with a 10 years old girl, has upheld the conviction of the accused under Section 377 IPC and sentence of 10 years imprisonment imposed upon him. It was held that an accused cannot cling to a fossil formula and insist on corroborative evidence, if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Thus, in view of the aforesaid judgment of the Hon'ble Supreme Court, the severity of the crime committed by the accused with the child of tender age, being a gruesome act, does not call for any leniency.

In the light of aforesaid discussion, this Court does not find any irregularity or illegality in the impugned judgments or findings of the courts below, which are hereby affirmed.

Accordingly, present petition is dismissed.

The petitioner is on bail. He is directed to surrender before the Court of Chief Judicial Magistrate concerned within a week from the date of passing of this order to undergo remaining part of sentence. Copy of this order be sent to the Courts below.

(Harnaresh Singh Gill)
Judge

January 30, 2019
avin/ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No