

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-777-2019 (O&M)

Date of Decision: 13.02.2020

Sikander Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. BS Jatana, Advocate for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Custody certificate filed by learned State counsel is taken on record. Be tagged at the appropriate place.

Through this revision, petitioner-accused has laid challenge to judgment dated 15.02.2019 of lower Appellate Court, dismissing his appeal thereby, affirming the judgment of conviction and order of sentence of the trial Court dated 31.05.2013, whereby he was held guilty under Section 377 IPC and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of ₹6000/-. It was also ordered that victim is entitled to a compensation of ₹5000/- under Section 357(1) Cr.P.C., out of fine amount of ₹6000/-, if, realized, subject

to decision of revision, if any. Jagsir Singh, co-accused of petitioner who was summoned as an additional accused by virtue of Section 319 Cr.P.C., acquitted of the charges framed against him.

Briefly, petitioner-Sikandar Singh, was sent to face trial in case FIR No. 110 dated 02.09.2007, under Sections 377 and 511 IPC , Police Station Sadar, Mansa and charge-sheeted as such, on the allegations that in the night of 01.09.2007, petitioner committed carnal intercourse with complainant-Harjit Singh, after removing his pant and underwear, taking him in school compound.

After holding trial, learned trial Court convicted and sentenced the petitioner in the manner as narrated above, vide judgment of conviction and order of sentence dated 31.05.2013.

Being aggrieved, the petitioner approached Ist Appellate Court, who after hearing both the sides, dismissed his appeal affirming aforesaid judgment of conviction and order of sentence, vide impugned judgment dated 15.02.2019.

Learned counsel for the petitioner *inter alia* contends that life of spermatozoa is only 72 hours. The occurrence allegedly took place in the night of 01.09.2007, whereas sample to the Forensic Science Laboratory (FSL) was sent on 10.09.2017 i.e., after expiry of life period of spermatozoa. Thus, link evidence was missing. Both the Courts below failed to appreciate that as per prosecution story, petitioner forcibly took away complainant in school compound by jumping over the wall which is highly improbable and un-believable for the reason that it is

difficult to forcibly drag or take away such a fully build matured young boy of the age of 16 years. As per prosecution story, the doctor had sealed the swabs taken from anus of complainant with the seal having impression 'DKJ', but as per FSL report, the samples received by it did not contain aforesaid seal impression. That apart, there were major contradictions in the statements of complainant and prosecution witnesses, inasmuch as, the complainant in his initial statement as PW-5 testified that the shop from where he had gone to take sugar in the night time on the alleged date, falls in between his house and the school. Complainant did not disclose the reason for his going to school ahead of the said shop. Contrary to it, in his subsequent statement, the complainant made a somersault, testifying that he was caught by petitioner before reaching the shop and was taken to school compound forcibly. In his initial statement, complainant testified that he became un-conscious and remained as such on the following day also, but in his subsequent statement, he testified that he was very much conscious at the time of alleged un-natural carnal intercourse and also thereafter. PW-2 Prem Singh father of complainant testified that they had gone to hospital on motorcycle, whereas complainant as PW-5 testified that he had gone to hospital on tempo, because of his inability to sit on motorcycle. Both the Courts below ought to have acquitted the petitioner on account of missing of link evidence and above major contradiction. In support of his contentions, learned counsel for the petitioner has relied upon a judgment of Apex Court in Tameezuddin @ Tammu Vs. State of

(NCT) of Delhi, 2009(4) RCR (Criminal) 345 and of this Court in Avtar Singh Vs. State of Punjab, 2016(5) RCR (Criminal) 517.

On the other hand, learned State counsel strongly refuting the submissions of learned counsel for the petitioner submits that PW-6 Head Constable Basant Singh, carrier of samples to the FSL Authorities specifically testified that at the time of delivery of samples to FSL, the same were un-tampered and intact with seal bearing impressions 'DKJ' affixed by the doctor. Medical evidence supported the prosecution story in its entirety.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

No question of law much less substantial has been raised in this revision.

This Court, while exercising its revisional powers, has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the judgments of both the Courts below.

It is impossible and un-believable that a young person of the age of 16 years would put or jeopardize his own reputation at stake, by levelling false allegations of his carnal intercourse by the petitioner. Rather, in such cases, the victim always tries to hide the offence

committed with him by someone. Considering this aspect of the matter, when complainant-Harjit Singh, as PW-5 twice in Court repeatedly testified against the petitioner that in the night of 01.09.2007, petitioner had committed carnal intercourse with him, he cannot be disbelieved.

As soon as, the victim testified against the petitioner in Court, other infirmities pointed out by learned counsel for the petitioner qua sending of samples of spermatozoa late by 9 days to the FSL by the police, non-taking of samples of spermatozoa of the petitioner and contradiction in the statement of complainant loses its significance, inasmuch as, they relate to insignificant aspect of the case.

More so, the fact cannot be lost sight that the alleged occurrence took place on 01.09.2007, whereas initial deposition of complainant for the first time was recorded after one year i.e. in 2008 and thereafter, for the second time in the year 2012, i.e. after around 5 years. No body is perfect in this imperfect world. Minor contradictions relate to insignificant aspect of the case are bound to occur in the narration of even truthful witnesses.

The complainant in his deposition unambiguously narrated the entire incident beyond any shadow of doubt about carnal intercourse with him by the petitioner, testifying that before he reached the shop from where he had to take sugar, he was caught hold by the petitioner and was dragged/taken away to the school compound. Thereafter, making him naked, petitioner committed un-natural carnal intercourse with him.

I have carefully gone through the judgments of both the Courts

below and find no illegality or perversity in the same.

The instant revision, being completely devoid of any merit, is dismissed.

February 13, 2020
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No