

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

Neutral Citation No. 2023:PHHC:049675

**CRR No.1350 of 2014**

**Date of Decision: April 11, 2023**

**Deepak**

**...Petitioner**

**Versus**

**State of Haryana**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Vishal Garg Narwana, Mr. Sagar Sharma and  
Mr. Vasu Shandilaya, Advocates for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

**DEEPAK GUPTA, J.(Oral)**

This revision is directed against the concurrent findings of conviction against the petitioner.

2. Vide judgment dated 15.12.2012 in criminal case No.107/2007/2011 arising out of FIR No.29 dated 16.03.2007, registered at Police Station Dhand, District Kaithal, petitioner has been convicted under Sections 377 and 506 of Indian Penal Code by Ld. Addl. Chief Judicial Magistrate, Kaithal; and vide separate order dated 18.12.2012, he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹2,000/- for committing the offence under Section 377 IPC with default sentence of 2 months. He was further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- for committing offence under Section 506 IPC with default sentence of one month for non-payment of fine. Both the substantive sentences were directed to run concurrently. Criminal Appeal No.171 of 2012 filed against the said judgment of conviction and order of sentence, has been dismissed by learned Additional Sessions Judge, Kaithal, vide judgment dated 11.03.2014.

3. (i) According to the prosecution, on 28.10.2006, V.P. Singh alias Bittu (PW6) along with his father visited Police Station Dhand and made a complaint (Ex.PA), as per which on 25.10.2006 at about 8 pm, he was going to visit the house of his grandmother near new bus stand, Dhand, when he was forcibly caught hold by accused Deepak (petitioner), who gave beatings to him and dragged him to the back side of bus stand into the bushes. Another boy accompanying the accused-petitioner gagged his mouth with handkerchief. His (complainant's) trouser was removed forcibly and then firstly, Deepak and thereafter, another person were subjected him to carnal intercourse against the law of nature, turn by turn. They also put their private part into his mouth and compelled him to perform oral sex. These persons after committing the said illegal acts threatened him not to disclose the incident to his family members, otherwise he shall be done to death. At the time when this incident occurred, one Deepa S/o Lajja Ram, resident of village Dhand was passing by, who had witnessed the occurrence and informed the family members of the complainant.

(ii) On the above complaint, initially daily diary report (Ex.PW7/A) was recorded on 28.10.2006 and later on, FIR was registered on 16.03.2007. Site plan Ex. PW7/B was prepared. During investigation, medico legal examination of the victim was got conducted on 01.11.2006. Statements of witnesses were recorded. After concluding the investigation, final report under Section 173 Cr.P.C. was filed to prosecute accused-petitioner Deepak under Sections 377 and 506 of IPC, as it was concluded that no one else was involved in the crime.

(iii) Accused-petitioner was charge-sheeted under Sections 377 and 506 of IPC, to which he pleaded not guilty and claimed trial.

(iv) Prosecution examined 9 witnesses to prove the charges.

PW1 Dr. Kailash Garg had conducted medico legal examination of the victim and proved MLR (Ex.P-9). He also proved on record medical report of petitioner-accused Deepak as Ex.P-10.

PW 2 Mamu Ram and PW3 Jasbir are the grandfather and father respectively of the victim, who corroborated the statement of victim.

PW4 Constable Rishi Pal deposed about depositing the parcels of blood sample, anal swab, clothes etc. to the FSL, Madhuban.

PW5 Head Constable Mahavir Singh testified about deposition of various parcels by the Investigating Officer and handing over the same to Constable Rishi Pal for taking to FSL.

PW6 V.P. Singh alias Bittu is victim-complainant, who deposed about the incident.

PW7 Inspector Hem Chander proved presenting of challan in the Court.

PW8 ASI Mann Singh, the Investigating Officer of the case, proved various steps taken by him during investigation.

PW9 Inspector Sunder Singh proved application PW8/A and Ex.PW8/B moved before the Director, FSL, Madhuban and Medical Officer, CHC, Kaul for seeking their opinion.

(v) In statement under Section 313 Cr.P.C., incriminating circumstances appearing in the evidence of the prosecution were

confronted to the accused-petitioner, to which he pleaded false implications and that victim V.P. Singh alias Bittu was of unsound mind and had testified on account of tutoring by his father.

(vi) In defence, accused-petitioner examined Rakesh Kumar, Assistant Vernacular Record Keeper, who proved on file Kalendra under Section 107/151 Cr.P.C. of Police Station Dhand as Ex.DA.

DW-2 Head Constable Vijay Kumar did not produce the summoned record pertaining to the year 2006 as the same had been destroyed.

(vii) Matter was then heard by learned Additional Chief Judicial Magistrate, Kaithal, who found the statement of the victim as quite reliable and so, recorded conviction. As noticed earlier, conviction has been upheld by the Appellate Court.

4. It is contended by learned counsel for the accused-petitioner that both the Courts below have ignored the major contradictions appearing in the prosecution evidence and the other lacunae and so, impugned judgment of conviction and order of sentence deserve to be set aside. Attention is drawn towards delay in the FIR; that complaint Ex.PA, which is the basis of the FIR, is not proved on record; that there is unexplained delay in conducting medico legal examination of the victim-complainant; that father of the victim-complainant had earlier refused for medico legal examination of the victim-complainant; that no injury on the body of the victim-complainant answering the description of injuries which someone may sustain during the process of sodomy, are proved on record nor any injury was found on the private parts of the accused-

petitioner. Even no injury was found over the anal orifice region of the victim-complainant. It is also contended that the alleged eye witness Deepa has not been examined by the prosecution. Statements of PW2 and PW3 are hearsay and that previous enmity between the accused-petitioner and the victim-complainant family is admitted by the Investigating Officer. It is further contended that the accused-petitioner and one other person are alleged to have committed the crime but it emerged in investigation that no one else was involved, which shows the falsity of the prosecution case. Besides, occurrence allegedly took place at bus stand, Dhand, which is a crowded public place and so, possibility of committing crime of such nature is ruled out. Lastly, it is argued that mental condition of the victim-complainant was not sound at the time of alleged occurrence and so, his testimony cannot be relied. It is also urged that at the time of alleged incident, accused-petitioner was hardly 20 years of age and not a previous convict and that this aspect has also been ignored by the Courts below.

With all these submissions, prayer is made to set aside the impugned judgments of conviction as recorded by the Courts below along with the order of sentence.

5. Learned State counsel, on the other hand, supported the concurrent findings recorded by both the Courts below and submitted that all the points as raised in this revision has been duly dealt with by the Courts below. Prayer is made for dismissal of the revision petition.

6. I have considered submissions of both the sides and have perused the record carefully.

7. This is true that PW6 V.P. Singh alias Bittu, i.e. victim-complainant of the case is the only witness to depose about the crime of sodomy having been committed upon him by the accused-petitioner and the prosecution failed to examine the alleged eye witness, namely Deepa. However, the question is whether statement of PW6 is reliable and stands corroborated by other evidence or not, because when the conviction is based on sole testimony of one witness, it is necessary that the testimony of such a witness should inspire sufficient confidence in the mind of the Court. When the witness is the victim of the crime, his testimony requires to be given much credence and his statement cannot be disbelieved only because of some minor contradictions.

8. In this case, it has specifically come in the testimony of PW6 V.P. Singh alias Bittu that on 25.10.2006, Deepak, present in the Court (accused-petitioner) met him near bus stand, placed handkerchief on his mouth and did wrong act with him in his anal at bus stand, Dhand. As per him, nobody came to help him. He tried to escape but could not do so as accused did not leave him. Accused was also accompanied by one other person, who had caught hold of his face. He deposed that he felt pain in his anus and that his family members took him to Kaul for blood test & medical examination and also to the Police Station for taking action against the accused. He proved the complaint Ex.PA.

9. The above said testimony of PW6 is assailed on the ground that it is not corroborated by other evidence, inasmuch as, Deepa alleged to be the eye witness as per complaint (Ex.PA), is not examined. Learned Courts below have rightly held that non-examination of Deepa is not fatal

to the prosecution. Criminal antecedent of accused-petitioner as well as his father have been noticed in order to observe that Deepa might have been won over by the accused-petitioner. Apart from this, it is not a sine quo non to examine an independent witness to corroborate the statement of a victim of crime. It will not be out of place to mention that statement of PW6 V.P. Singh alias Bittu finds due corroboration from medical evidence. The plea of learned counsel for the accused-petitioner that medical evidence does not support the victim-complainant, is misconceived. It is important to notice that apart from anal swabs and other clothes of the victim-complainant, the underwear of victim-complainant was also taken into possession and sent to FSL for necessary analysis. By moving an application Ex. PW8/A, specific opinion was sought from the Director, FSL, regarding the presence of semen on the underwear of the victim. The report of the Director, FSL, Madhuban clearly shows the presence of semen on the front as well as back side of the underwear of the victim, thus corroborating the statement of the victim to the effect that he was subjected to anal intercourse. In the face of this medical evidence, it is immaterial that injuries on the shoulder or other parts of the body of the victim were not found in the MLR or that scars were found only on the knee portion. It has also been rightly observed by the Trial Court that soon after the incident, the victim had reported the matter to his family members and so statement of PW2 and PW3 is material to what had been narrated to them by the victim, though their statement is of hearsay as far as incident of sodomy is concerned, as they had not witnessed the same.

10. As far as delay in lodging the FIR is concerned, it is immaterial in the facts and circumstances of this case and the nature of the crime. In a case of such a nature when honour of the family is involved, family takes time to take a decision as to whether the matter should be reported or not. Besides, there is delay of only three days, inasmuch as occurrence was reported to the police on 28.10.2006. However, it is unfortunate that the police did not come into action immediately. Despite the fact that a serious cognizable offence was reported, instead of instantly lodging the FIR, police only recorded the DDR on that day and then recorded the FIR after much delay on 16.03.2007. The victim cannot be put to prejudice because of this omission/lapse on the part of the police.

11. Similarly, although the matter was reported to the police on 28.10.2006, but instead of taking the victim to the hospital for his immediate medico legal examination, police was compelled to do so on 01.11.2006 when the father of the victim moved to the SDM of the area. These circumstances in itself i.e., not instantly lodging the FIR and then not getting the medico legal examination conducted immediately shows that rather than taking action in accordance with law, the police was trying to save the accused-petitioner. It would not be out of place to mention here itself that despite specific assertion of the victim that accused-petitioner Deepak was accompanied by one other person, police did not try to investigate that aspect and simply came to the conclusion that nobody else was involved.

12. Counsel for the accused-petitioner has also urged that victim

was of unsound mind, hence his statement cannot be believed. This aspect has also been thoroughly gone through by both the Courts below, who found that IQ level of the victim-complainant was 42%. Apart from this, before examining him in the Court as a witness, the Trial Court had put general questions to him and had satisfied itself as to the capacity of the witness as PW6 to depose and only thereafter had recorded his statement. PW6 has faced ordeal of lengthy cross-examination and gave sensible answers to all the questions put to him. He clearly stated in his testimony that he had given his clothes to the Medical Officer and that he had not changed the underwear when the same was given to the doctor.

13. All other aspects as raised by counsel for the accused-petitioner have also been duly met with by the Courts below and nothing could be pointed out to differ from the view taken by the Courts below.

14. On account of above discussion, it is held that there is no merit in the present revision petition. As such, the same is hereby dismissed.

15. As the accused-petitioner is on bail, he is directed to surrender before the Superintendent of Police, Kaithal, immediately. The copy of this order be sent to learned Chief Judicial Magistrate concerned as well as the concerned jail authorities to carry out the order. If it is found that the accused-petitioner has not surrendered before the concerned jail authorities, then he be arrested by taking necessary process as per law for carrying out the sentence.

**April 11, 2023**  
sarita

**(DEEPAK GUPTA)**  
**JUDGE**

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