

**(2011) 03 P&H CK 0380**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRA No. 805-SB of 2008

Manoj

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** March 21, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 367, 377, 511

**Hon'ble Judges:** Jora Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Jora Singh, J.

Manoj son of Baldev, preferred this appeal to challenge the judgment of conviction dated 4.1.2008 and order of sentence dated 8.1.2008 passed by Additional Sessions Judge, Fast Track Court, Sirsa, arising out of the FIR No. 103 dated 20.2.2006, registered under Sections 367, 377 and 511 of the Indian Penal Code at Police Station, City Sirsa.

2. By this judgment he was convicted under Sections 367 and 377 readwith Section 511 IPC and was directed to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 1,000/-and in default of payment of fine to further undergo rigorous imprisonment for two months for the offence punishable u/s 367 IPC. u/s 377 readwith Section 511 IPC, he was directed to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 500/-and in default of payment of fine to further undergo rigorous imprisonment for one month.

3. Both the sentences were ordered to run concurrently.

4. Prosecution story, in brief, is that police party headed by Mahinder Kumar, Sub Inspector while on patrol duty was present near GTM Chowk, Khairpur where

Bhagwan Dass had met him and his statement was recorded to the effect that:

That on 19.2.2006 his grand son Aarish @ Mannu son of Prem Kumar had gone to play outside of his house at about 7:30 pm and till 10 PM he did not come back. On this, he alongwith other members of his family started searching for him. At about 1 am, on 20.2.2006 his grand son spotted coming from the premises of Govt. Primary School, Khairpur. He disclosed to him as well as to the members of his family that accused Manoj son of Baldev resident of Khairpur who used to reside in the nearby house of their house, took him to the school. There accused Manoj Kumar put his penis into his mouth. After some time he asked Aarish to take off his pant and then forcibly tried to commit unnatural offence with him against the order of nature. On this Aarish raised alarm and on hearing the same they reached there and accused managed to run away from the spot. His grand son was frightened and he narrated the entire occurrence to them.

5. In view of the statement of the complainant, formal FIR was recorded. Mannu @ Aarish and Manoj Kumar were produced before the doctor for medico-legally examined. Rough site plan with correct margins was prepared. After the completion of investigation, challan was presented.

6. Accused was charge sheeted under Sections 367 and 377 IPC, to which he pleaded not guilty and claimed trial.

7. In order to substantiate its case, prosecution has examined six witnesses.

8. PW1 Mohan Lal Draftsman stated that he had prepared scaled site plan Ex.P1 with its correct margins.

9. PW2 SI Kali Ram stated that on receipt of statement of Bhagwan Dass Ex.P2 he had recorded the formal FIR Ex.P4. Special report was sent to the Illaqa Magistrate.

10. PW3 SI Mahinder Kumar stated that on 20.2.2006 he was on patrol duty. Bhagwan Dass had met him. Statement of Bhagwan Dass Ex.P2 was recorded and after making endorsement Ex.P3, the same was sent to Police Station, on the basis of which formal FIR Ex.P4 was recorded. Rough site plan with correct margins was prepared. Victim and the accused were produced before doctor for their medico legal examination.

11. PW4 Aarish @ Mannu is the victim. He has supported the prosecution story.

12. PW5 Bhagwan Dass is the complainant and reiterated his stand before the police.

13. PW6 Dr. Jagdish Aggarwal stated that on 20.2.2006, Mannu was medico-legally examined and found the following injuries on his person:

1. Abrasion of 0.5 cm x 0.5 cm over right cheek with blood clot/scab positive and pain and tenderness;

2. Abrasion of 1x1 cm over left side of knee of left leg with scab present;
3. Abrasion of 3x0.5 cm over right leg anterior tibial area with avulsed epithelium present.
14. On the same day he had also medico-legally examined Manoj and found the following injuries on his person:
  1. Lacerated wound of 1x0.5 cm over right parital area of scalp with blood clots present;
  2. Abrasion of left ear posterior to pinna and interiorly to mastoid process blood clot present;
  3. Bruise 5x2 cm over left side neck with milk tenderness and pain neck movements normal. No subcutaneous crepitus on swelling.
15. After close of the prosecution evidence, statement of the accused was recorded u/s 313 Cr. P.C. Accused denied all the prosecution allegations and pleaded to be innocent.
16. Defence version of the accused was that he was a driver of the car owned by Prem Kumar. The car was being plied as Taxi. There was a dispute regarding payment. Sunil, Angrej and Deshi took him to the house of Prem Kumar but there was no settlement and was thrown out of the house. To save themselves, false case was got registered against him.
17. In defence, Surender Kumar appeared as DW1 and stated that he was a Chowkidar in Govt. Primary School. There was a main gate and after school hours gate was kept closed. There was no occurrence as alleged by the complainant in the school premises.
18. After hearing learned PP for the State, defence counsel for the Appellant and from the perusal of the evidence on the file, Appellant was convicted and sentenced as stated aforesaid.
19. I have heard learned defence counsel for the Appellant, learned State counsel and have gone through the evidence on the file.
20. Learned defence counsel for the Appellant after arguing for some time when failed to point out any infirmity or illegality in the impugned judgment, then stated that Appellant was a taxi driver. He was 22 years old and is first offender. Despite order of the Court dated 12.2.2009 to suspend the sentence, Appellant failed to furnish bail bonds. Appellant has already undergone three years and nine months of sentence. Requested to take a lenient view.
21. State counsel argued that Appellant is in custody from the very beginning but Appellant had attempted to commit unnatural offence. Keeping in view the age of the Appellant and custody period, no objection, if lenient view is taken.

22. Learned Counsel for the Appellant has not challenged the impugned judgment on the point of conviction and only requested to take lenient view but the question is whether prosecution story inspires confidence or not.
23. Victim namely Aarish @ Mannu appeared in the Court and stated that while playing he was taken to the nearby school where the Appellant had committed unnatural offence with him. Raula was raised and on hearing raula, two boys came there. After committing the crime, Appellant had fled away from the spot. Incident was brought to the notice of his father. He was also medico-legally examined.
24. Grand Father Bhagwan Dass of victim Mannu appeared as PW5 and stated that on 19.12.2006 his grand son Aarish @ Mannu was playing in front of his house at about 7:30 pm but failed to return till 10 pm. Efforts were made to trace out him but he was not traceable. They were present in front of the school then Mannu was found coming out of the school at about 1 am. At that time, he was weeping. On inquiry, he disclosed that he was taken into the premises of school where Appellant had committed unnatural offence with him. Matter was brought to the notice of police.
25. PW6 Dr. Jagdeep Aggarwal stated that Mannu was medico-legally examined. As per MLR three injuries were noticed on the person of Mannu. Appellant was also medico-legally examined and three injuries were found on his person. Statement of Mannu, his grand father and doctor shows that evidence was rightly scrutinized by the trial Court. No reason to differ.
26. Defence version of the Appellant is that he had a money dispute. He alongwith Sunil, Angrej and Deshi had gone to the house of Prem Kumar but when there was no settlement then he was given beatings but no suggestion to the witnesses that Appellant had a dispute with Prem Kumar. If Prem Kumar had a dispute then question is why Sunil, Angrej and Deshi had given injuries. Suppose Appellant had a dispute with Prem Kumar then no question of false implication when reputation of minor boy was at stake. Due to money dispute, complainant Bhagwan Dass was not expected to level false implication particularly when reputation of minor boy and honour of the family was at stake. If Appellant was to be falsely implicated then very easy for Bhagwan Dass to state that he was abused or some articles were stolen by the Appellant. judgment of the trial Court on the point of conviction is up held.
27. At the time of occurrence, Appellant was 22 years old. He is the first offender and is a poor man. Vide order dated 12.2.2009 Appellant was ordered to be released to the satisfaction of Chief Judicial Magistrate, Sirsa by suspending the sentence but despite order, Appellant failed to furnish bail bonds. From the very beginning, Appellant is in custody till today. As per the custody certificate and the file, Appellant has already undergone three years nine months and seven days. Keeping in view the antecedents of the Appellant, Appellant is directed to undergo imprisonment already undergone i.e three years nine months and 17 days.

28. For the reasons recorded above, appeal without merit dismissed with modification qua sentence.

29. Appellant is in custody.

30. Registry is directed to issue release warrants immediately. He be set at liberty forthwith, if he is not required in any other case.