

**In the Court of Karanvir Singh, PCS, Judicial Magistrate First
Class, Fatehgarh Sahib. (UID-PB0489)**

CHI No.177/2017
Case No. 36
CNR No.PBFG03-004429-2017

Date of Institution: 04/07/2017
Decided on: 07/01/2019

State

versus

Shehbaz Khan, son of Kesar Khan, resident of village Bulara, Police
Station and District Fatehgarh Sahib.....(**Accused**)

FIR No. 48 Dated 28/04/2017
Under Section:377 IPC, PS Fatehgarh Sahib.

Present: Sh. Amitoj Singh, APP for State.
Accused on bail with counsel Sh. Jagdeep Singh
Advocate.

JUDGMENT;

1 The aforementioned accused was forwarded to face trial
by SHO, police station Fatehgarh Sahib, for alleged commission of
offence punishable under section 377 of Indian Penal Code
(*hereinafter referred to as 'IPC'*).

2 Prosecution version as unfolds from final report under

section 173 Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) is that on 28/04/2017 ASI Ashok Kumar alongwith police party was present at police station Fatehgarh Sahib, where Rampal Singh came present with his wife Gurmeet Kaur and son Gurpreet Singh @ Bunty and got recorded his statement to the effect that on 26/04/2017, his co-villager Shehbaz Khan, allegedly took his son namely Gurpreet Singh, who is deaf and dumb, alongwith him at about 08.00pm and upon returning back, on 27/04/2017, his son Gurpreet Singh narrated the whole occurrence in signs to him and his wife that accused Shehbaz Khan did indecent act with him on 26/04/2017. It is further alleged that complainant, alongwith his wife and son, went to the house of accused who confessed his guilt. Complainant also approached the respectables of the village, however, no action was taken against the accused.

3 Upon this, FIR No.48 dated 24/04/2017, under section 377 IPC, Police Station Fatehgarh Sahib was registered against the accused and challan was presented under aforesaid section. Compliance of section 207 Cr.PC was made. Finding a *prima facie* case, charge against the accused under section 377 IPC was framed on 15/07/2017, to which accused pleaded not guilty and claimed trial.

4 In order to bring home the guilt of accused under above said section, prosecution examined Dr. Kuldeep Singh as PW-1 who proved the medico legal record of Gurpreet Singh Ex.PW1/A and Ex.PW1/B. Thereafter, prosecution examined Rampal Singh as PW-2, Gurmeet Kaur as PW-3, Retired Inspector Ashok Kumar as PW-4, Dr. Mahesh Kumar Jindal as PW-5 and ASI Karamjit Singh as PW-6.

5 It is, however, pertinent to mention here that out of the aforesaid prosecution witnesses, PW-2 and PW-3 did not support the prosecution version and turned hostile. Further, PW-6 was only examined in chief, who did not come present again for his cross examination, whereafter the evidence of the prosecution was closed by order of the Court. Since the said witness did not make himself available for his cross examination, as such his examination in chief also, cannot be read into evidence of the prosecution.

6 On conclusion of prosecution evidence, statement of accused was recorded under section 313 Cr.P.C., wherein all the incriminating circumstances were put to him to which he pleaded false implication. He chose to lead evidence in his defence, however closed the same without examining any witness.

7 Learned APP for the State has submitted that on

26/04/2017, accused Shehbaz Khan committed carnal intercourse, against the order of nature with Gurpreet Singh and thereby committed an offence punishable under section 377 IPC. Learned APP further states that although the main witnesses of the prosecution have turned hostile, however, from the evidence of the remaining prosecution witnesses, its case stands established against the accused and hence has prayed that the accused be convicted for the offenses charged against him.

8 Learned counsel for the accused, on the other hand, has submitted that the prosecution has miserably failed to prove its case against the accused. The main witnesses of the prosecution have turned hostile and have not supported its case. Learned counsel for the accused prays that the accused be acquitted in the present case.

9 I have heard learned APP for State and counsel for the accused and have perused the case file with their able assistance.

10 It was the case of the prosecution that on 26/04/2017, in the area of village Bulara, accused committed carnal intercourse with Gurpreet Singh and hence committed an offence punishable under section 377 IPC. PW-2 Rampal Singh and PW-3 Gurmeet Kaur were the main witnesses of the prosecution to establish the above

mentioned allegations against the accused.

11 PW-2 Rampal Singh, in his examination in chief, recorded before the Court, has deposed that he knows accused Shehbaz Khan. On 26/04/2017, he had gone out of village. He had not seen any incident alleged against his son. Thereafter, the said witness has deposed that accused Shehbaz Khan, present in the Court, has not committed any indecent act towards his son. The said witness further deposed that he did not get recorded any statement with the police. The said witness, on the request of the prosecution, was declared hostile and was cross examined by the learned APP for the State. During his cross examination by the APP, said witness was confronted by his alleged statement given to the police which he denied.

12 Thereafter, PW-3 Gurmeet Kaur was examined by the prosecution to prove its case. The said witness also deposed that she had only heard rumours that some unknown person had committed some indecent act with her son Gurpreet Singh, but when she saw him at home, he was completely well. She has further deposed that Shahbaz Khan is her co-villager and has done nothing wrong with her son. She deposed that she did not get recorded her statement with the police against the accused. Said witness was also declared hostile on

the request of the prosecution and was cross examined at length by learned APP for the State, however, nothing substantial came out from her cross examination. Even the concerned doctor PW-1 Dr. Kuldeep Singh, who prepared the medico legal report of Gurpreet Singh Ex.PW1/A, has deposed before the Court that during the examination of Gurpreet Singh before him, he observed no external or local injury upon him.

13 All the remaining witnesses of the prosecution, examined by it, are formal in nature and nothing incriminating against the accused has come out from their evidence. The prosecution in the present case was duty bound to establish its case against the accused beyond all shadows of reasonable doubts. However, from the witnesses examined by it, nothing incriminating has come out against the accused. The star witnesses of the prosecution i.e. PW-2 and PW-3 have not supported its version and have turned hostile. Both the said witnesses have categorically stated that the accused present before the Court did nothing wrong against their son. In view of the above facts, in the opinion of this Court, prosecution has miserably failed to prove its case against the accused and hence the accused stands acquitted of the charge framed against him. The surety of the accused is

discharged. Case property, if any, be disposed of after the expiry of the period of filing appeal or revision. File, after doing the needful, be consigned to record room.

**Pronounced in open Court on this;
7th of January, 2019**

Ramandeep Kaur
Judgment Writer

**(Karanvir Singh), PCS
Judicial Magistrate Ist Class,
Fatehgarh Sahib (UID PB0489)**

