
(2015) 08 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 104 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Harbans Lal and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 59
Limitation Act, 1963 — Section 6
Penal Code, 1860 (IPC) — Section 34, 377

Citation : (2015) 08 SHI CK 0028

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ashok Chaudhary, V.S. Chauhan, Additional Advocate Generals and J.S. Guleria, Assistant Advocate General, for the Appellant; N.S. Chandel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Piar Singh Rana, J—Present appeal is filed against the judgment passed by learned Additional Sessions Judge Fast Track Court Kangra at Dharamshala in appeal RBT No. 44/D/05/02 titled Harbans Lal and another v. State of H.P. decided on dated 1.10.2007.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that minor victim Abhishek Sharma was student of 7th class in Government Middle School Bhagsunag in the year 1998. It is alleged by prosecution that on dated 29.4.1998 at about 1.15 P.M. minor victim was playing with other students after the recess hours. It is alleged by prosecution that accused called minor Abhishek and took him to the store room of his shop under the pretext of arranging the empty sacks. It is alleged by prosecution that accused persons committed sodomy with minor victim forcibly against his will. It is alleged by prosecution

that FIR Ext. PW4/A was recorded and further alleged that minor victim was medically examined by Dr. Reeta Dutt who issued MLC Ext. PW1/A. It is alleged by prosecution that investigating officer went to the spot and prepared site plan Ext. PW7/A. It is alleged by prosecution that I.O. also submitted application for medical examination of minor victim and opinion of medical officer was sought. Challan was filed against accused persons under Section 377 IPC.

3. Charge was framed against the accused persons by learned trial Court under Section 377 IPC. Accused persons did not plead guilty and claimed trial.

4. Prosecution examined the following witnesses in support of its case:--

4.1 Prosecution also produced following piece of documentary evidence in support of its case:--

5. Learned trial Court convicted both accused persons under Section 377 read with Section 34 IPC and sentenced the convicted persons to rigorous imprisonment of two years and imposed fine to the tune of Rs. 1,000/- (Rupees one thousand only) each. Learned trial Court further directed that in case of default of payment of fine convicted persons would undergo simple imprisonment for one month. Thereafter accused persons Harbans Lal and Mukesh filed criminal appeal No. 44/D/05/02 titled Harbans Lal and another v. State of H.P. Learned Additional Sessions Judge Fast Track Court Kangra at Dharamshala allowed the appeal and set aside the judgment and sentence passed by learned trial Court and held that prosecution has not succeeded beyond shadow of doubt to prove commission of carnal intercourse upon minor victim.

6. Feeling aggrieved against the judgment passed by learned first appellate Court State of H.P. filed present appeal.

7. We have heard learned Additional Advocate General appearing on behalf of the State of H.P. and learned Advocate appearing on behalf of the respondents and also perused the entire record carefully.

8. Point for determination in present appeal is whether judgment and sentence of learned trial Court should be sustained or whether judgment of learned first appellate Court should be sustained.

9. ORAL EVIDENCE ADDUCED BY PROSECUTION:

9.1. PW1 Reeta Dutt has stated that she is serving as medical officer in zonal hospital Dharamshala since June 1997. PW1 has further stated that on dated 1.5.1998 at about 3.50 PM she examined minor Abhishek Sharma victim. PW1 identified minor Abhishek Sharma in Court and stated that after medical examination she observed following injuries. (1) Linear abrasion on anterior part of his left bone. Middle linear abrasion. Slight bleeding with clotted blood. (2) One cm slanting linear superficial abrasion over the left malar prominence. (3) Linear superficial abrasion over upper left quadrant of left buttock. Size of abrasion was 3 inches x 3 inches. On the same location there was another

superficial abrasion size of which was 2/1/2x 1 inch. (4) External genitalia was well developed. (5) Superficial abrasion size of 2x2x1/2 was found just below external anal opening sepsis and foul smell was present. (6) External anal opening was slightly gaping with slight mucosal abrasion present on lower part of external anal and sphincter and anal canal. Tenderness was present. She has stated that there was no evidence to suggest that sodomy was not committed. She has stated that probable duration of injury was 48 hours anterior to the time of his examination. She has also stated that she has brought the original MLR and Ext. PW1/A is true copy of MLC. She has admitted that minor victim had not disclosed the identity of person who had sodomized minor victim.

9.2 PW2 Dr. Dinesh Mehta has stated that he is serving as medical officer at zonal hospital Dharamshala since 1997. He has stated that on dated 5.5.1997 at about 11.40 AM he examined Mukesh Kumar accused present in Court. He has stated that there was nothing to suggest that he was suffering from a disease pertaining to impotency. He has stated that on local examination of genitals it was found that he could effect his penis and he was quite competent to do intercourse. He has further stated that no local or other injury was found present either on penis or other parts of the body and no facial matter was present on penis nor there was foul smell and further stated that shape and size of penis was found normal. He has stated that in his opinion there was nothing to suggest that accused had not committed rectum intercourse. He has stated that he issued MLR and its true copy is Ext. PW2/A. He has stated that he has brought the original MLR. He has stated that on the same day he also examined co-accused Harbans Lal and he identified the accused in Court. He has stated that accused was not found to be suffering from such disease as relating to impotency and on local examination of the genitals he was found capable of erecting the penis and no facial matter or foul smelling was present on genitals or clothings. He has stated that shape and size of penis of accused Harbans was found normal. He has stated that in his opinion there was nothing to suggest that he had not done rectum intercourse and he issued MLC Ext. PW2/B. In his cross examination he has stated that there was no injury or sign on person of Mukesh Kumar and Harbans Lal to suggest that they had committed anal intercourse.

9.3 PW3 Suresh Kumar has stated that he is labourer and accused persons are not known to him. He has stated that accused are not familiar with him and further stated that accused persons did not commit any criminal offence in his presence. Witness was declared hostile by prosecution. He has stated that on dated 29.4.1998 he was working at Bhagsunag. He has denied suggestion that son of Suresh namely minor Abhishek was playing in the play ground of school. He has stated that he does not know that co-accused Harbans called minor Abhishek and took minor Abhishek inside shop. He has denied suggestion that he went to the shop of co-accused Harbans. He has denied suggestion that co-accused Harbans committed sodomy with minor Abhishek. He has stated that he does not know that Mukesh Kumar was also present. He has stated that he had not given any statement mentioned in portion "A" to "A" of Mark X to the

Investigating Agency. He has denied suggestion that he has resiled from his earlier statement in collusion with accused persons. He has stated that complainant is not known to him. He has stated that he does not know who is the owner of shop where co-accused Harbans is running shop.

9.4 PW4 Dile Ram has stated that in the year 1998 he was posted as Additional SHO at P.S. Dharamshala. He has stated that on dated 1.5.1998 he recorded statement of complainant minor Abhishek. He has stated that thereafter FIR Ext. PW4/A was registered which is signed by him. He has stated that contents of FIR were explained to complainant and after hearing the contents of complaint as correct complainant had signed it. He has stated that FIR is not personally written by him. He has stated that complaint was written by Munshi (Official posted in police station). He has stated that FIR was written in his presence and father of complainant was also present.

9.5 PW5 minor Abhishek has stated that he is student of 10th class and at the time of incident of sodomy he was student of 7th class. He has stated that on dated 29.4.1998 at 1.15 PM he was playing in play ground of Government Middle School Bhagsunag. He has stated that co-accused Harbans Lal called him and took him inside the store room of shop on the pretext of arranging empty sacks. He has stated that thereafter co-accused Harbans had committed sodomy by way of removing his pant. He has stated that servant of Harbans Lal namely Mukesh had also committed sodomy with him. He has stated that thereafter he came back to his residential house and slept. He has stated that on dated 1.5.1998 co-accused Harbans Lal again called him and thereafter he narrated the entire incident to his father. He has stated that he recorded FIR Ext. PW4/A. He identified the accused persons in Court. He has admitted that his father had also beaten him. He has admitted that his father had also beaten him because foreigner also committed sodomy with him.

9.6 PW6 Suresh Kumar has stated that he used to run tea shop at Bhagsunag. He has stated that he has two sons and his elder son Abhishek was student of 7th class on dated 29.4.1998 and younger son was student of 4th class and both used to reside with him. He has stated that on dated 29.4.1998 his elder son Abhishek came from school at 5.30 PM and slept. He has stated that his son told that co-accused Harbans Lal called him inside the store room of shop on the pretext of arranging empty sacks. He has stated that his son also informed him that inside the store room of shop co-accused Harbans Lal and Mukesh have committed sodomy with his son. He has stated that thereafter FIR filed in P.S. on dated 1.5.1998 when again co-accused Harbans Lal called his elder minor son Abhishek for committing sodomy. He identified the accused persons in Court. He has stated that his minor son Abhishek was medically examined in zonal hospital Dharamshala. He has denied suggestion that he has friendly relations with Braham Dutt who is owner of shop of co-accused Harbans Lal. He has denied suggestion that he has filed the present case in collusion with owner of shop Braham Dutt so that co-accused Harbans Lal should vacate the shop. He has

denied suggestion that he has threatened co-accused Harbans to vacate the shop otherwise he would send him to civil imprisonment.

9.7 PW7 R.P. Jaswal has stated that in the year 1998 he was incharge of police post. He has stated that after registration of FIR he visited the spot and prepared site plan Ext. PW7/A. He has stated that after investigation criminal case under Section 377 IPC was made out against accused persons. He has stated that complainant and accused persons were medically examined and MLCs obtained. He has stated that after investigation challan was filed in Court. He has stated that there are three shops adjoining to the shop of co-accused Harbans Lal. Again stated that there is a shop of tea. He has stated that co-accused Harbans Lal is running the shop of confectionery. He has stated that building of shop comprised of two stories. He has stated that in the building there are five shops and restaurant. He has stated that he did not interrogate the shopkeepers of adjoining shops. He has stated that he also did not interrogate the teachers of school. He has denied suggestion that he has filed false present case.

10. Statements of accused recorded under Section 313 Cr.P.C. Accused have stated that they were outsiders and due to this reason witnesses deposed against them on account of conspiracy committed by father of victim. Accused did not examine any witness in their defence.

11. Submission of learned Additional Advocate General appearing on behalf of the State that as per testimony of PW1 Dr. Reeta Dutt who had examined the minor victim namely Abhishek it is proved on record that sodomy was committed upon the minor victim who was school going minor child aged 14 years is accepted for the reasons hereinafter mentioned. We have carefully perused the testimony of PW1 Dr. Reeta Dutt who had medically examined minor Abhishek Sharma aged 14 years. PW1 has specifically stated in positive manner that minor Abhishek victim had sustained six injuries upon his body. PW1 Reeta Dutt has specifically stated in positive manner that she has observed superficial abrasion upon anal portion of minor Abhishek and further stated that there was no evidence to suggest that sodomy was not done. As per testimony of PW1 Dr. Reeta Dutt who had medically examined the minor it is proved beyond reasonable doubt that sodomy was committed upon minor Abhishek. Testimony of PW1 is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW1 Dr. Reeta Dutt. There is no evidence on record in order to prove that PW1 has hostile animus against accused persons at any point of time.

12. We have carefully perused the testimony of PW2 Dr. Dinesh Mehta who had medically examined co-accused Harbans Lal and Mukesh. PW2 has specifically stated in positive manner that there was nothing to suggest that accused persons have not committed erectile intercourse. Even as per testimony of PW2 it is proved on record that there was nothing to suggest that accused persons have not committed erectile intercourse. Testimony of PW2 is also trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the

testimony of PW2. There is no evidence on record in order to prove that PW2 has hostile animus against accused persons.

13. We have carefully perused the testimony of PW5 minor victim namely Abhishek. At the time of incident minor Abhishek was student of 7th class and his age was 14 years. PW5 has specifically stated in positive manner that on the date of incident he was student of 7th class and further stated in positive manner that on dated 29.4.1998 at about 1.15 PM he was playing in Government middle school Bhagsunag playground. PW5 has further stated in positive manner that co-accused Harbans Lal called him to arrange empty sacks in store room of shop. PW5 has further stated that thereafter co-accused Harbans Lal had committed sodomy with him after removing his pant. PW5 has stated in positive manner that thereafter servant of co-accused Harbans namely Mukesh had also committed sodomy with him. PW5 has further stated that thereafter again on dated 1.5.1998 co-accused Harbans Lal called him for committing offence of sodomy and thereafter he filed FIR. Testimony of minor Abhishek is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW5 Abhishek. There is no evidence on record in order to prove that PW5 has hostile animus against accused persons at any point of time.

14. Testimony of PW5 is further corroborated by PW6 Suresh Kumar who is father of minor victim. PW6 has specifically stated in positive manner that on dated 29.4.1998 minor victim namely Abhishek aged 14 years came at 5.30 PM from school and slept and did not work in shop. He has stated that minor Abhishek had informed him that accused persons had committed sodomy with him in store room of shop. Testimony of minor Abhishek is corroborated by PW6 Suresh Kumar.

15. Criminal offence of sodomy is defined under Section 377 IPC which means non coital carnal copulation with a member of the same or opposite sex e.g. per anus or per os. It is well settled law that coitus per os is committed in the mouth and coitus per anus is committed when penis is injected into anus.

16. In present case as per testimony of minor victim namely Abhishek aged 14 years it is proved beyond reasonable doubt that accused persons have injected their penis into anus of minor victim. Testimony of minor Abhishek is corroborated with testimonies of medical officers i.e. PW1 and PW2 and is also corroborated with medical certificates placed on record and is also corroborated with testimony of PW6 father of complainant. (See Childline India Foundation and Another Vs. Allan John Waters and Others, (2011) CriLJ 2305 : (2011) 2 Crimes 72 : (2011) 3 JT 570 : (2011) 2 RCR(Criminal) 339 : (2011) 3 SCALE 639 : (2011) 6 SCC 261 : (2011) 2 SCC(Cri) 900 : (2011) 2 UJ 1065 titled Childline India Foundation and another v. Allan John Waters and others) It is well settled law that testimony of minor should be believed if same is trustworthy reliable and inspires confidence of Court. We are of the opinion that testimony of minor Abhishek aged 14 years is trustworthy reliable and inspire confidence of Court.

17. Submission of learned defence Advocate appearing on behalf of accused persons that there is delay in filing the FIR and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. In present case it is proved on record that offence of sodomy was committed upon minor aged 14 years on dated 29.4.1998 at 1.15 PM in grocery shop of co-accused Harbans Lal at Bhagsunag District Kangra (H.P.) with victim namely Abhishek Sharma aged 14 years who was student of 7th class at the time of incident. It is proved on record that FIR was registered on dated 1.5.1998 under Section 377 read with Section 34 IPC in P.S. Dharamshala District Kangra (H.P.) Minor Abhishek has satisfactorily explained the delay in present case for lodging FIR. Minor Abhishek has specifically stated in FIR that due to fear he remained silent. Minor Abhishek has specifically stated in positive manner that again on dated 1.5.1998 co-accused Harbans Lal called minor victim Abhishek and thereafter Abhishek narrated the incident to his father and thereafter FIR was lodged. Present criminal offence was committed upon minor aged 14 years. It is well settled law that Courts are under legal obligation to protect the interest of minors in the society. It is well settled law that law of limitation is non-operative upon minor till minor attains age of majority as per Section 6 of Limitation Act 1963. In the present case victim is minor aged 14 years. In view of the fact that criminal offence of sodomy was committed upon minor aged 14 years who was student of 7th class we are of the opinion that delay in lodging the FIR is satisfactorily explained by prosecution. Hence it is held that delay in lodging the FIR is not fatal to prosecution in present case.

18. Another submission of learned Advocate appearing on behalf of the accused persons that similar complaint of sodomy was filed against Karon resident of Bhagsunag by victim and thereafter same was withdrawn and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. We are of the opinion that before us matter is not relating to incident of sodomy by Karon but before us the matter is relating to sodomy committed by accused persons on dated 29.4.1998. We are of the opinion that it is not expedient in the ends of justice to disbelieve the testimony of minor Abhishek in present case simply on the ground that another complaint of sodomy against Karon was withdrawn by victim relating to some other incident.

19. Another submission of learned Advocate appearing on behalf of accused persons that medical evidence did not corroborate the commission of criminal offence of sodomy is rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the testimony of PW1 Dr. Reeta Dutt who had medically examined minor victim Abhishek Sharma and we have carefully perused the testimony of PW2 Dr. Dinesh Mehta who had medically examined the accused persons namely Harbans and Mukesh. PW1 Dr. Reeta Dutt has stated in positive manner that there was superficial abrasion upon the anal opening with skin pelling. Dr. Reeta Dutt who had medically examined the victim has stated that there was abrasion upon external anal

opening portion of victim. PW1 has specifically stated that there was no evidence to suggest that sodomy was not committed upon minor Abhishek. Similarly PW2 who had examined the accused persons has specifically stated that there was nothing to suggest that rectum intercourse was not committed by accused persons. It is held that medical officers PW1 and PW2 have also corroborated the version of minor victim namely Abhishek Sharma in present case.

20. Another submission of learned Advocate appearing on behalf of accused persons that there was no school record to prove that on the date of incident minor victim namely Abhishek had gone to school and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that facts can be proved by way of oral evidence as per Section 59 Chapter IV of Indian Evidence Act 1872. PW5 has specifically stated when he appeared in witness box that on dated 29.4.1998 at about 1.15 PM minor victim was playing in play ground of school and thereafter co-accused Harbans Lal brought the minor victim aged 14 years in store room of his shop and committed criminal offence of sodomy. Testimony of PW5 is also corroborated by PW6 father of victim that on dated 29.4.1998 victim i.e. minor Abhishek aged 14 years had gone to school. Hence it is held that it is proved on record by way of oral evidence of PW5 and PW6 that on dated 29.4.1998 the victim i.e. minor Abhishek had gone to school when victim was student of 7th class. Accused persons did not examine any official from school in order to disprove the testimonies of PW5 and PW6. Oral testimonies of PW5 and PW6 that victim namely Abhishek aged 14 years had gone to school remained unrebutted on record.

21. Another submission of learned Advocate appearing on behalf of accused persons that there was no evidence on record in order to prove that victim had played with children in playground of government school and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. PW5 has specifically stated in positive manner that on dated 29.4.1998 at 1.15 PM he was playing in playground of school and thereafter he was called by co-accused Harbans Lal and was took inside store room and thereafter inside store room accused persons have committed criminal offence of sodomy upon the minor victim. Testimony of PW5 to this effect remained unrebutted on record. Accused did not adduce any rebuttal evidence on record in order to prove that victim Abhishek was not playing in playground of school as alleged by victim. The fact that victim was playing in playground of school is proved as per Section 59 of Indian Evidence Act 1872.

22. Another submission of learned Advocate appearing on behalf of accused persons that father of minor had given beating to victim and injuries mentioned in MLC were sustained by minor victim due to injuries inflicted by father of victim and on this ground appeal filed by State be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. There is no evidence on record

in order to prove that superficial abrasion injuries were given by father of victim upon the anal part of body of victim. It is proved on record as per testimony of PW1 that victim had superficial abrasion injuries upon the anal part of his body due to rectum intercourse. Hence it is held that offence did not connect the superficial injury upon anal part of body of victim with beatings given by father of victim.

23. Another submission of learned Advocate appearing on behalf of accused persons that present criminal case was filed against accused persons under Section 377 IPC in collusion with owner of shop in order to pressurize co-accused Harbans Lal to vacate the shop is also rejected being devoid of any force for the reasons hereinafter mentioned. There is no positive cogent and reliable evidence on record in order to prove that present criminal case under Section 377 IPC was filed against Harbans Lal in collusion with owner of shop. The plea of accused that present criminal case was filed in collusion with owner of shop is defeated on the concept of ipse dixit (An assertion made without proof).

24. Another submission of learned Advocate appearing on behalf of accused persons that there is material contradiction between testimonies of prosecution witnesses and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. Incident took place on dated 29.4.1998 and testimonies of prosecution witnesses were recorded on dated 27.5.2000, 24.5.2001, 18.6.2001 and 17.7.2001. Prosecution evidence was recorded after two years of incident. It is well settled law that when evidence of prosecution witnesses is recorded after a gape of sufficient time then minor contradictions are bound to come in criminal case. It was held in case reported in C. Muniappan and Others Vs. State of Tamil Nadu, AIR 2010 SC 3718 : (2010) 9 JT 95 : (2010) 9 SCC 567 : (2010) 10 SCR 262 titled C. Muniappan and others v. State of Tamil Nadu that even if there are some omissions contradictions and discrepancies then entire evidence would not be discarded. It was held that undue importance should not be given to omissions, contradictions and discrepancies which do not go to the root of the case. (See: Sohrab and Another Vs. The State of Madhya Pradesh, AIR 1972 SC 2020 : (1972) CriLJ 1302 : (1972) 3 SCC 751 : (1972) SCC(Cri) 819 : (1973) 1 SCR 472 : (1973) 5 UJ 43 , See: State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48 : (1985) CriLJ 493 : (1984) 2 SCALE 728 : (1985) 1 SCC 505 ; See: Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753 : (1983) CriLJ 1096 : (1983) 2 Crimes 232 : (1983) 1 SCALE 665 : (1983) 3 SCC 217 : (1983) 3 SCR 280 ; See: State of Rajasthan Vs. Om Prakash, AIR 2007 SC 2257 : (2007) 8 JT 620 : (2007) 8 SCALE 576 : (2007) 8 SCR 1000 : (2007) AIRSCW 3937 : (2007) 4 Supreme 642 ; See: Prithu @ Prithi Chand and Another Vs. State of H.P., AIR 2009 SC 2070 : (2009) 3 JT 440 : (2009) 3 SCALE 192 : (2009) 11 SCC 588 : (2009) 2 SCR 765 ; State of U.P. Vs. Santosh Kumar, (2009) 11 JT 592 : (2009) 12 SCALE 269 : (2009) 9 SCC 626 : (2009) 15 SCR 106 : (2009) 8 UJ 3992 ; See : Appabhai and Another Vs. State of Gujarat, AIR 1988 SC 696 : (1988) CriLJ 848 : (1988) 1 Crimes 606 : (1988) 1 JT 249 : (1988) 1 SCALE 228 :

(1988) 2 UJ 27 ; See: Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, AIR 1999 SC 3544 : (1999) CriLJ 4561 : (1999) 7 JT 247 : (1999) 6 SCALE 69 : (1999) 8 SCC 649 : (1999) 3 SCR 1 Supp : (1999) AIRSCW 3546 : (1999) 8 Supreme 364 ; See: State of Himachal Pradesh Vs. Lekh Raj and Another, AIR 1999 SC 3916 : (2000) CriLJ 44 : (1999) 4 Crimes 337 : (1999) 9 JT 43 : (1999) 7 SCALE 86 : (2000) 1 SCC 247 : (1999) 4 SCR 286 Supp : (1999) AIRSCW 4008 : (1999) 9 Supreme 155 ; See: Laxman Singh Vs. Poonam Singh and Others, AIR 2003 SC 3204 : (2003) 96 CLT 782 : (2003) CriLJ 4478 : (2003) 1 JT 61 Supp : (2003) 7 SCALE 334 : (2004) 10 SCC 94 : (2003) 3 SCR 528 Supp : (2004) 1 UJ 116 : (2003) AIRSCW 4566 : (2003) 6 Supreme 644 ; See: Kuria and Another Vs. State of Rajasthan, AIR 2013 SC 1085 : (2012) CriLJ 4707 : (2012) 4 JCC 2644 : (2012) 9 JT 296 : (2013) 2 RCR(Criminal) 108 : (2012) 9 SCALE 42 : (2012) 10 SCC 433 : (2012) AIRSCW 5259 In present case learned defence Advocate did not point out any material contradiction which goes to the root of case.

25. It is well settled law that falsus in uno falsus in omnibus is not applicable in criminal cases. (See Bhe Ram Vs. State of Haryana, AIR 1980 SC 957 : (1980) CriLJ 735 : (1980) 1 SCC 201 : (1980) SCC(Cri) 206 . Also See Rai Singh Vs. The State of Haryana, AIR 1971 SC 2505 : (1971) CriLJ 1738 : (1972) 4 SCC 289 : (1972) 4 UJ 4 It was held in case reported in Jose alias Kolli Jose Vs. The State of Kerala, AIR 1973 SC 944 : (1973) CriLJ 687 : (1973) 3 SCC 472 : (1973) SCC(Cri) 372 that conviction can be given on testimony of solitary witness in criminal case if testimony of witness inspires confidence of Court. It was held in case reported in Dalbir Singh and Others Vs. State of Punjab, AIR 1987 SC 1328 : (1987) CriLJ 1065 : (1987) 2 JT 580 : (1987) 1 SCALE 830 : (1987) 3 SCC 360 : (1987) 2 UJ 116 that there is no hard and fast rule which could be laid down for appreciation of evidence and it is a question of fact and each case has to be decided on the fact as they proved in a particular case.

26. Another submission of learned defence counsel appearing on behalf of accused persons that independent witness namely PW3 Suresh Kumar son of Kirpa Ram did not support the case of prosecution and on this ground appeal filed by State of H.P. be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. It is not the case of prosecution that Suresh Kumar PW3 was present when criminal offence of sodomy was committed inside the store room of shop as shown in site plan Ext. PW7/A placed on record. As per site plan Ext. PW7/A placed on record offence of sodomy upon minor child aged 14 years namely Abhishek Sharma was committed by accused persons inside the store room which was closed from all sides. It is proved on record that inside the store room which was closed from walls from all corners the criminal offence of sodomy was committed in presence of accused persons and victim Abhishek only and no independent witness was present inside the store room when criminal offence of sodomy was committed by accused persons. It is well settled law that prosecution is not under legal obligation to examine the independent witness when criminal offence of sodomy was committed inside the forewalls of store

room which was not accessible to general public.

27. In view of above stated facts judgment passed by learned Additional Sessions Judge Fast Track Court Kangra at Dharamshala in criminal appeal i.e. RBT No. 44/D/05/02 titled Harbans Lal and another v. State of H.P. is set aside and we affirm judgment and sentence passed by learned trial Court in criminal case No. RBT-22-II/2001/98 titled State of H.P. v. Harbans Lal and another. Files of learned first appellate Court and learned trial Court be sent back forthwith along with certified copy of judgment. File of this Court i.e. criminal appeal No. 104 of 2008 be consigned to record room after due completion. Criminal appeal No. 104 of 2008 is disposed of. All pending miscellaneous application(s) if any also stands disposed of.